

1924
Box 1

RAILWAYS ACT, 1921.

PROCEEDINGS OF THE RAILWAY
RATES TRIBUNAL.

SCHEDULES OF STANDARD CHARGES.

MONDAY, JUNE 23RD, 1924.

NINTH DAY.



LONDON :

PRINTED & PUBLISHED BY HIS MAJESTY'S STATIONERY OFFICE

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1924

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PROCEEDINGS OF THE RAILWAY RATES TRIBUNAL.

MONDAY, JUNE 23RD, 1924.

PRESENT :

W. B. CLODE, Esq., K.C. (*President*).

W. A. JEPSON, Esq.

GEO. C. LOCKET, Esq., J.P.

NINTH DAY.

THE SOLICITOR-GENERAL (SIR HENRY SLFSSER, K.C.) and Mr. W. BOWSTEAD (instructed by the Treasury Solicitor) appeared on behalf of the Minister of Transport.

THE LORD ADVOCATE (THE RT. HON. H. P. MACMILLAN, K.C.), MR. A. C. CLAUSON, K.C., MR. BRUCE THOMAS and MR. ALFRED TYLOR (instructed by the Honorary Solicitors) appeared for the Railway Companies' Association.

THE HON. R. STAFFORD CRIPPS appeared for the London County Council.

MR. F. G. THOMAS, K.C., and MR. JACQUES ABADY (instructed by Sir Thomas R. Ratcliffe-Ellis) appeared for the Mining Association of Great Britain.

SIR DOUGLAS HOGG, K.C., M.P., and MR. F. J. WHOTESLEY (instructed by Messrs. Vizard, Oldham, Crowder and Cosh) appeared for the Traders' Co-ordinating Committee; The National Association of Railway Travellers; and the following local authorities: The boroughs of Leeds, Cardiff, Oldham, St. Helens, West Ham, East Ham, Croydon, Woolwich, Gravesend, Richmond, Southport, Watford, Leamington, Morecambe, and Rothsay; and the Urban District Councils of: Dartford, Mitcham, Heston and Isleworth, Teddington, Beddington and Wallington, Surbiton, Harrow-on-the Hill, Prestwich, Epsom, Carshalton, Barnet, Hampton, and Bexley Heath.

MR. HERBERT MORRISON appeared for the National Joint Council of the Trade Union Congress and the Labour Party; and for the London Labour Party.

MR. W. G. R. BOYS and MR. HUGH SHAYLER appeared for the Civil Service Confederation.

MR. S. CARLILE DAVIS appeared for the Plymouth Incorporated Mercantile Association.

MR. GEO. DEW, J.P., L.C.C., appeared for the National Association for the Promotion of Cheap Transit.

MR. JACQUES ABADY (instructed by Messrs. Kensholes & Prosser, Aberdare) appeared for the Cardiff Collieries, Limited.

MR. A. MOON appeared for the Midland Association of Blast Furnace Owners.

MR. F. C. BORER represented Messrs. Harrods Staff Council.

MR. EDWIN CLEMENTS (instructed by Messrs. Neish, Howell & Haldane) appeared to watch the proceedings on behalf of various Objectors to the Schedules of Standard Charges.

MR. J. H. WORRALL appeared for the National Anti-Profiteering Society.

Sir RALPH LEWIS WEDGWOOD, C.B., C.M.G., re-called.

Re-examination continued by the LORD ADVOCATE.

4619. You may recall that with regard to the Hull and Barnsley Railway Company, I think our friends desired some additional information on your statistical table relating to that company. Have you prepared that information?—I am prepared to put in a fuller statement. (*Table handed in; see Appendix.*)

4620. Will you just explain what it shows?—This statement shows the capital expenditure in each year on the Hull and Barnsley Railway, the gross and net receipts, and then the net receipts per cent. of the capital expenditure.

4621. That information was not supplied by you in your examination-in-chief, but it was desired in cross-examination, and you now supply it?—Yes. That shows the gross and net receipts per cent. of capital expenditure from $\frac{1}{2}$ per cent. in 1886 to 3·6 per cent. in 1913. If I might just make one comment on that, it will be observed that the capital expenditure is a growing feature, and therefore naturally the growth in the net receipts per cent. of capital expenditure would, in any event, come out somewhat lower than the formula, since a good deal of the capital is spent in the later years.

4622. I want now to take up another matter with you. With regard to the facilities which the traders have enjoyed for criticising your books, have you been Chairman of the Special Committee dealing with Rates and Charges throughout?—Yes.

4623. And then was there under you an Accountant Committee on which each of the railways was represented?—Yes.

4624. Who carried out the practical work?—That is so.

4625. I venture to think there must have been some misapprehension on the part of Sir Douglas Hogg. I refer to page 208 of the proceedings, where the learned President was good enough to say, in the second column, just after Question 4169, this: (*President*): But it is quite clear, is it, Sir Douglas, that your clients are to have full investigation of all the books of the companies necessary to establish the accuracy or the inaccuracy of the 1913 figures?—(*Sir Douglas Hogg*): I understand that is what Sir Ralph now offers. (*Lord Advocate*): Not only so, but they have had it for the last 15 months?—(*Sir Douglas Hogg*): Do not let us have a controversy about it; but I am told you are wrong about that,

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SIR RALPH LEWIS WEDGWOOD, O.B., C.M.G.

[Continued.]

and they have not seen any books." It is obvious there must have been some misunderstanding about that?—I think so. I was rather taken aback when I heard that statement made, and I have enquired since. When we originally offered the Traders Co-ordinating Committee facilities for checking the figures, the figures were put before them. There was no question of any limitation.

4626. There was no question of any limitation in their access to the books?—That is so; nor, so far as I can ascertain, has there been any limitation imposed since.

4627. Had you been directed by the Tribunal to afford facilities, so far as possible, to the traders in order that the points of difference might be ascertained and, if possible, overcome before we reached the Tribunal for the present purpose?—That was so; and we were anxious to convince the traders that the whole of the information was at their disposal.

4628. I refer you to a letter of the 25th October, 1923, addressed to Mr. Cash. I think Mr. Cash was representing the traders in this matter?—I think that is so. I think it was the Traders Co-ordinating Committee, and we were dealing with the Accountants Sub-Committee.

4629. Of course he had his own staff at his disposal?—I believe so.

4630. And on the 25th October, 1923, did he address a letter to Mr. Cope in these terms: "Railways Act, 1921. Standard Revenue. With reference to the investigation which I am making on behalf of the Traders' Co-ordinating Committee of the books of the four group companies, I am writing to you as Chairman of the Companies' Committee with regard to certain difficulties which have arisen in connection with such examination. The railway companies have been good enough to give me access to their records." Does that represent the state of matters on the 23rd October, 1923?—As I understand it, yes.

4631. I am not going into the substance of these matters; of course they were without prejudice; I am only concerned with the fact of access, because many matters were discussed, were they not?—Yes, many matters were discussed, and some suggestions were adopted.

4632. Some suggestions were adopted which emanated from Mr. Cash when he made them, and they were appreciated and given effect to?—Yes.

4633. "We are not going into these, because these were all preliminary to the case before the Tribunal and it would be improper to discuss them." Then following upon that letter, did Mr. Cope, on the 8th November, 1923—the dates are significant—in reply to that letter, say this: "As this matter will no doubt shortly come up for discussion before the Rates Tribunal, I hope you will agree that it would be a convenience to all parties, and of assistance to the Tribunal, if, prior to the hearing, we could arrive at an understanding as to the points of difference (if any) either on questions of principle or on detail. If you concur in this view, I should be very glad if you could communicate with me on questions of principle and with the Accountant of the companies concerned on any question of detail." Now without going through these letters—there was a great deal more correspondence and one does not want to discuss matters that were in controversy—does that represent fairly the attitude of your company, and, indeed, of all the companies throughout?—I believe so, and, as far as I have been able to ascertain, that was the view.

Mr. Wrottesley: Perhaps the Lord Advocate will allow me to intervene in order to prevent a misunderstanding. It is not suggested by the Traders' Co-ordinating Committee that the railways have kept anything back. If there has been a failure so that in fact accounts have not been investigated, it was because it was thought to be a waste of time in many instances, until this Tribunal had settled certain points of principle. I am anxious to make that clear on behalf of the Traders' Co-ordinating Committee.

Lord Advocate: On the Notes, it looks exceedingly unfortunate because Sir Douglas Hogg actually puts it in this way: We were good enough to offer facilities, but there was a certain view on Mr. Cash's part as to the utility of the investigation of that statement. If that is understood, it clears matters up altogether. (To the Witness): I want to ask you one question to conclude this.

Mr. F. G. Thomas: In fairness to Sir Douglas Hogg, you might notice what he said at Question 4170: "I do not say that access had been refused, because I think the matter was left until the Tribunal decided."

4634. Lord Advocate: Yes. But what I was objecting to was this: "I am told you are wrong about this, and they have not seen any books." Of course that is obviously wrong. (To the Witness): Just to clear the history of the matter: As you say, a number of points arose as the investigation proceeded, and on some of them you appreciated what had been the criticisms of Mr. Cash and those associated with him, and these have been given effect to, to some extent?—Such things as the make-up of the figures.

4635. And also you were enabled to realise from those meetings what would be some of the big points in controversy between us which the Tribunal would have to settle?—Yes.

4636. And these you, and the witnesses before you, have brought to the surface as far as you can?—That is so.

4637. So far as the accuracy or inaccuracy of the 1913 accounts is concerned and the sufficiency of the maintenance allowance in the 1913 accounts, has that ever been raised until these proceedings with you?—No, it has not been raised previously, until a fortnight ago, or so; three weeks ago.

4638. Might I refer to a suggestion which you made (I think it was made on the last day) as to a means of meeting the difficulty which was present to Sir Douglas Hogg's mind and to the minds of those instructing him. You suggested that it might be possible to hold over the fixture of the Standard Revenue until the next stage?—Yes.

4639. That is to say, that the present stage should be utilised for obtaining decisions upon those questions of principle which have emerged in relation to the first five items in folio 1, holding over the actual fixing of the sum until it appeared at a later stage what was the principle of maintenance allowance on which you were to proceed in the ideal year?—That was the suggestion that I threw out.

4640. Of course, in any event, the present proceedings will not result—this stage of the proceedings will not result, will it, in the fixing of the Standard Revenue finally?—No; there is the question of the economies to come, in any event.

4641. That will have to be held over in any event, and therefore we can only get a certain length at this stage?—Yes.

4642. As regards the 1913 accounts have you had any specific complaint as to the adequacy or inadequacy of maintenance allowances or depreciation, as our friends call it, in relation to those accounts?—I cannot recollect any.

4643. As regards the suggestion that the methods of 1913 should be perpetuated for all time in your railway accounts for the future; is that possible?—No; quite impossible; there are so many different methods already to begin with.

4644. First of all, there are many methods already, but if the result of those various methods in operation in 1913 was over all to give an adequate maintenance figure for 1913, do you in that way establish the justice of those accounts?—As applicable to the whole of the future?

4645. No, as applicable to the year 1913?—I think so, yes.

4646. Although individually the methods pursued by individual railway companies might be well open to criticism, if all those companies now embraced in

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[Continued.]

an amalgamation when their 1913 accounts are collated show on the whole an adequate provision for maintenance or depreciation do you suggest that that is evidence that these accounts have been fairly prepared?—Yes, I think that is the fair indication that they have been fairly prepared.

4647. If any specific question were raised with regard to the result of 1913 for all those companies now embraced in one amalgamated company would you be prepared to consider any such criticism levelled at the 1913 accounts?—Certainly.

4648. But as regards the future can you bind your companies to observe any one method of dealing with either maintenance or depreciation in perpetuity?—No, I think not. Ideas might change as to what was a sound method of charging for maintenance in which I include all the items, depreciation, renewals, and repairs.

4649. Would it be essential in preparing for the purpose of a comparison of like with like that there should have been a fair method employed in the standard year and a fair method equally employed in the subsequent year in question?—Yes.

4650. But if you had, for example, a complete change of method and electrified all your lines, let say, 15 years afterwards, of course the method of maintenance allowances or the method of depreciation would have to adjust themselves to the altered conditions, would not they?—Yes, you would have to evolve a new formula.

4651. And, therefore, you could not rigidly carry forward a method of depreciation or maintenance allowance which was a fair enough method in 1913 to all subsequent accounts for all time on your railway company?—No, I think it must be elastic enough for changes in maintenance and for changes of assets.

4652. Provided at each time when the accounts have been adjusted at 1913 a fair method, an equitable method, had been used in the compilation of those accounts at that time?—Yes.

4653. Otherwise, of course, you would have to prepare really a separate set of accounts parallel to your statutory accounts for the purpose of the comparison of all time?—Yes, we should have to have the two sets of accounts side by side.

4654. But you recognise, I think, what has been put very fairly before you that when you are comparing the accounts of one year with another and with a fixed year it is right the accounts in each of those years should be prepared upon a fair basis?—Yes.

4655. An equitable basis?—Yes.

4656. And in so far as it could be shown that the resultant of the methods of 1913 was unfair to the traders, if any specific complaint were made to you you would be prepared to consider that?—Certainly; but the whole thing must be taken into account all together.

4657. I think that will clear up something which has been rather difficult to us both. Now I want to ask you a question with regard to undeveloped land. Is it the policy of the railway companies to purchase land in advance of requirements?—Yes.

4658. If you are making a line in new territory which you expect will develop, do you frequently purchase enough land to double the line?—Yes, frequently.

4659. That is, land for widening?—Yes.

4660. Is it more economical to buy the land necessary for possible widening at the outset of the enterprise rather than when the occasion for widening arises?—Yes, it is more economical for two reasons. Firstly, you buy the land in one block instead of in two strips, you might say you make one bite at the cherry; and, secondly, you obviate the possibility of having to pay more for the land because it has become developed by the provision of works, and so on.

4661. Assuming that the Directors exercise a wise discretion, it is more provident and economical in the interest of everyone concerned in the line that the land should be bought at once at the outset of an undertaking where there is a reasonable prospect that such land will be required for widening?—Yes.

4662. Now, take the case of land bought for widening or extension purposes before 1913, but not yet utilised. When you do carry out that widening hereafter will the cost of the land be part of the capital cost of that undertaking?—I take it so.

4663. That would not be capital; the capital would already have been spent, would it not, with the acquisition of the land necessary for widening prior to 1913?—Yes.

4664. There you could not, could you, bring it in again in any revision subsequent to your utilisation of it?—I do not see how it would be practicable to do so.

4665. Nevertheless, of course, when the land is utilised it is, in fact, part of the capital expenditure upon widening?—Undoubtedly.

4666. Would it be entitled, therefore, to remuneration?—I consider so; yes.

4667. If it is not brought in under 58 (1) (c), can you see any way in which that land bought in the interests of all concerned and subsequently utilised could ever receive a remuneration at all?—No, I cannot see any way.

4668. You were unable to give an answer about loans for building houses, you may remember—it was not a large matter, but still at the moment you had not the information. Can you tell us how these are dealt with?—Yes; they are not charged to Capital Account No. 4, I think it is, and therefore they would not come forward under 58 (1) (b) for remuneration. They are loans, and the interest is all we get on them.

4669. Therefore these have never been present?—They have never been put in. The interest is 4 per cent. I think I was doubtful about that, but I have inquired since.

4670. I now want to ask you a question with regard to railway policy. It was suggested that unless an undertaking had a clear prospect of earning more than, shall we say, 4 per cent. the railway company would be better off in putting its money in War Loan, or some security yielding 5 per cent. In arithmetic it would, would it not?—Yes.

4671. But is that the way in which railway matters are gone about?—Well, in a matter where there is a large public interest involved we take a liberal view of the probable return from an extension of the undertaking, and without rigidly looking to make an increased profit on it we approach the thing from the public point of view.

4672. You recognise that any extension in that line which may be required will take its place in the general economy of your railway?—Yes.

4673. And while regarded as an integer by itself it might possibly yield less than if you retained the money in investments, on the other hand it may have an additional effect on your system throughout?—One takes into account its additional earning in the widest sense.

4674. You cannot deal with the proposition in water-tight compartments, as has been suggested?—No, I think in the long run you have to take into account the money value of public opinion.

4675. Do you regard yourselves as having no doubt a monopoly in this matter of transport which connotes a certain corresponding duty?—Yes.

4676. And do you find that derelictions of duty on the part of a railway in catering for the public are severely dealt with in another department of public life, namely, the Committee Rooms when you ask for new powers?—Yes. It is even the case where there are no derelictions.

4677. It is the case sometimes even although they are no derelictions. But you are, of course, exposed to public opinion in a very special way?—Yes.

4678. You are constantly in Parliament?—Yes.

4679. And Parliament is the ultimate Court in all such matters, of course?—Yes.

4680. And are you subject to a very close scrutiny of all you do?—Undoubtedly; yes.

4681. On the other hand, has Parliament equally confided to your Directorate as public trustees the conduct of the undertaking in the best interest of all

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[Continued.]

concerned?—Yes, it has left it to the discretion of the Directors to conduct the undertaking in the best manner possible.

4682. Now, there has been a figure hovering about the proceedings of 80 per cent. which has been referred to as a maintenance allowance and depreciation allowance?—Yes.

4683. It has been sought to contrast that figure with the figure of 112½ per cent. which Sir William Plender on your information adopted. Can you explain to us the discrepancy?—I do not know anything about the 80 per cent. as a figure, but I think it is quite legitimate and probable that the actual figure which might be applied in the adjustment of any particular renewal accounts might be considerably below the 112½ per cent. that has been spoken of.

4684. Is the 112½ per cent. a figure confined to the year 1923?—Yes. There are two points about that figure. Firstly, it is confined to the year 1923; it does not look beyond 1923 at all; and, secondly, it covers the whole abstract, repairs as well as renewals, and in the matter of repairs labour, which is the heavy item, by far the larger, occupies a much larger proportion than in the case of renewals.

4685. Does it in the least follow from the fact that 112½ per cent. is a reasonable addition to make for

the year 1923 the same figure of 112½ per cent. would be the figure which you would insert in your year 4 which will come up later for consideration?—No, for those two reasons. It would be something less probably. Of course, we observe that costs are going down, but whether that will eventuate or not I cannot say.

4686. The 112½ per cent., one ought to remember, is a figure which vouches the relation of 1923 to 1913 alone?—Yes, I think, perhaps, I ought to qualify what I said. Taking the ideal year as the percentage between the abstract in 1913 and the total abstract in the ideal year, you might take something analogous to the 112½ per cent.; I think you probably would, and it would be lower only if costs of material or wages had fallen; but if you take merely the renewals then it would be lower.

4687. Whatever the figure taken in the ideal year is, of course, it must be a factor in the budget for the ideal year?—Yes.

4688. And will at that stage be open to the most searching criticism from those who have an interest to reduce it?—Yes.

4689. And you will require to vouch it for your ideal year as you have sought to vouch it for 1923?—That is so.

4690. And you are prepared to do so?—Yes.

4691. When that table is prepared?—Yes.

(The Witness withdrew.)

Mr. Chauson: I think Sir Douglas Hogg wanted to see Mr. Cope again.

Sir Douglas Hogg: If you please.

Mr. RALPH COPE, re-called.

Further cross-examined by Sir DOUGLAS HOGG.

4692. You remember when you were last in that chair you were asked by me, I think, some questions about the monies put away to the various funds out of the Government £200,000,000?—Yes.

4693. And you told us that that was all done under expert advice. That is Sir William Plender?—I did not tell you that it was Sir William Plender, but I said it was under expert advice.

4694. That is right, and then you were asked a little later by Mr. Jepson: Would not the auditors be satisfied with the report of the expert, and your answer was: They might be the same person. That would indicate that Sir William Plender was the expert. Was that wrong; was he not the expert you were referring to?—Yes, he was.

4695. Sir William Plender, as you may know, has been here and given evidence?—Yes, I believe so.

4696. And he says that in advising the Great Western about what monies to put to the various funds he acted on your advice, and that all he did was to accept your assurance that the figures were reasonable. He is right, I suppose, is not he?—Yes.

4697. Now that being so, the expert advice really was your own?—No, I cannot say that that was so. It is true I divided up the figure as a credit to these funds because they required it, but he approved of that figure, and it was on our joint—

4698. But he only approved of the figure in this sense apparently that he asked you, so he told us, whether you had satisfied yourself that the figure was a reasonable one and he accepted your assurance that you had?—Yes, he did.

4699. What figure did you take in comparing depreciation, for instance?—How do you mean, what figure?

4700. Did you take a certain figure, what I may call a percentage figure, comparing 1913 with 1923?—No; it is nothing to do with 1913 at all. We had certain balances in these funds and obviously during the Control we were unable to carry out the arrears of renewal; therefore as we only received 15 per cent. over the 1913 cost from the Government it was obvious that those funds required strengthening to carry out the work, and in my judgment the sum necessary was the sum we placed there.

4701. Did not you take the trouble to ascertain whether the life, for instance, which you were calculating for your various things was the same in 1923, if that was the year, or 1922, as it was in 1913?—In my judgment, it had nothing whatever to do with it.

4702. Have you at no time endeavoured to ascertain whether the life was the same?—I do not see what the life has got to do with strengthening the funds to carry out arrears of maintenance.

4703. Then is your answer that you have at no time gone into the question of the life?—I do not think it is necessary.

4704. The only reason I am asking you is because you have sworn that you had. That is what I asked you beginning at Question 2057.

President: It is in the cross-examination by Mr. Collins, is it not?

4705. Sir Douglas Hogg: Yes, Sir. (To the Witness): "Can you tell me what was the method adopted by the Great Western"—that is the old Great Western—" (A.) It was on the basis of the life of asset"?—That is perfectly true, but you are asking me about the division of the £10,000,000, which is a very different thing.

4706. I asked you—I thought plainly, but obviously not—whether or not you had at any time gone into the question of whether the life period taken was right in 1913 for the purpose of 1923 or 1922?—No.

4707. You never have?—No, I have not.

4708. Just let us see what you said?—Not for 1923; for 1913, yes.

4709. Have you gone into the question of whether the life taken in 1913 was right to apply to-day, or in 1922; I do not care which; any of the post-war years?—No.

4710. You have never done that?—No.

4711. Let us see. In answer to Question 2057 you say: It was on the basis of the life of the asset?—Yes.

4712. And then they said that they got an expert accountant in 1913. That, I suppose, was Sir William Plender, was it?—Yes, it was.

4713. They got Sir William Plender to advise them as to the true figure to be charged each year. Then Question 2059: "What is the method that is now

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[Continued.]

adopted by the Great Western Company?—(A.) The same method." So that you still base it on the life?—Yes.

4714. "Is it exactly the same?—(A.) Yes, exactly the same, except that there is an addition made for increased cost of materials and increased cost of wages. (Q.) That is the only addition, is it?—(A.) And the provisions of to-day. The charge to-day has again been gone into in order to ascertain whether the life is the same as it was in 1913." Is that right?—It has been gone into.

4715. Why did you tell me just now you had not gone into it?—I have not.

4716. Do you mean someone else has gone into it, but not yourself?—Yes.

4717. Is that what you meant the Tribunal to understand by your answer two minutes ago, that it had been gone into, but that you were not the actual person who made the investigation?—I was not.

4718. Is that what you meant the Tribunal to understand by your answer two minutes ago?—I do not follow what you mean. You asked me if I had been into—

4719. I suggest that you are not being frank with the Court?—But I am, excuse me.

4720. Try and answer fully and frankly, not by the card, will you? You have heard the expression "swearing by the card," have you not?—No.

4721. It means that you swear a literal answer to the exact questions and give a misleading reply in consequence?—I do not think I have given a misleading reply.

4722. Will you try to answer fully and frankly now?—Well, I am trying to do so; you say I am not.

4723. Will you try? Cannot you even promise to do that?—I told you I have tried.

4724. Will you try?—If you suggest that I am not telling the truth—

4725. Let me try again. Was the life which had been taken in 1913 again investigated in the post-war years?—No, not in the years up to the middle of 1923.

4726. What you said was the charge to-day has again been gone into in order to ascertain whether the life is the same as it was in 1913?—Yes.

4727. Is the answer that it was, or it has not been gone into?—It is being gone into.

4728. It is now being gone into?—Yes.

4729. By whom?—Sir William Plender is probably doing it, yes.

4730. By whom?—Sir William Plender.

4731. In order to ascertain whether a different life should be taken now than that which was taken in 1913?—No, I cannot quite say that.

4732. In order to ascertain whether the same life should be taken now?—Yes; probably something like it. He has got to determine later as to whether the provisions are accurate or not.

4733. Whether the life to be taken is to be the same or something different?—Yes, he has got to advise.

4734. Have you at all attempted when you got at the £5,000,000 to make a comparison as between 1913 and any post-war year?—No. I do not think they are connected in any way; it was to strengthen the funds to provide for the increased cost of carrying out the arrears of renewal.

4735. You see you were apparently saying Sir William Plender had advised you that the 1913 provision had proved inadequate. That is right, is it not?—No, I do not think so. Where do you get that?

4736. Has Sir William Plender not advised you that the provision for depreciation was inadequate?—In 1913?

4737. Yes?—No.

4738. But when he investigated your figures, whatever the figure was, 1921, 1922, or 1923?—No, he has not advised to that effect. Perhaps I had better be quite clear about it. Of course in 1913 costs were very different to what they are to-day. There is no

doubt that the 1913 provision to-day would be inadequate to replace the assets.

4739. Obviously?—And in so far as the increased cost of wages and materials are concerned, the 1913 provision must be inadequate to-day.

4740. Then was an addition made when Sir William Plender made his investigation to represent the difference of the increased cost of materials and wages?—No, I made that.

4741. How much did you make?—80 per cent. I put 80 per cent. on the proportion, but that is all to the provision for renewals, taking a long view.

4742. In what year did you take 80 per cent. as being the proper addition to make?—1923.

4743. For the accounts for the year 1923 or for the year 1922?—For the year 1923.

4744. You thought the proper addition to make was 80 per cent. for the year 1923?—Yes, having regard to the increased cost of materials and the higher rates of wages it does not look, from what we know now, that we are ever likely to get prices down all round much below 100 per cent., and 80 per cent. appears to be a very fair figure over a course of years.

4745. Was that after Sir William Plender had advised the £5,000,000 or £10,000,000?—No; I did that on my own.

4746. Was it after Sir William Plender had advised the £5,000,000 or £10,000,000?—No; it was £10,000,000, I think.

4747. It was before the £10,000,000 was arrived at?—Yes.

4748. You had decided that 80 per cent. be taken?—That it was a proper figure to take.

4749. Are you applying that to the year 1923?—Yes; I told you so just now.

4750. No doubt you investigated the matter carefully before you arrived at that figure?—No. We know full well that wages are up about 150 per cent., and that materials are roughly 70 or 80 per cent., and that the all-round figure of carrying out work to-day is something like 120 per cent.; that is my experience. Now, over a period of years things will probably go down, and to-day if you add to the proportion of 1913 80 per cent. you, in my judgment, have a very fair figure.

4751. What were you adding the 80 per cent. to exactly?—To the provision for renewals.

4752. That is to say, you would take—I want to understand exactly how you arrived at it—how do you arrive at the proportion for renewals; by estimating what the life of the thing is which is going to be renewed?—I told you before that in 1913 we were advised as to the provisions we should make and they were based on the life. Now that was a true provision for 1913; to-day we say there should be the same provision plus an allowance for increased cost and for additional units brought into service.

4753. But the 80 per cent. does not cover the additional units brought into the service?—No; that is a further addition.

4754. Eighty per cent. is for the increased cost?—Yes.

4755. Does that apply to everything—permanent-way, rolling-stock and locomotives?—Yes.

4756. All those?—Yes.

4757. Not to steamships, I gather. Sir William told us you did not do it with regard to steamships?—Oh, yes.

4758. I thought your method with regard to steamships was to depreciate so much a year, and then buy a new steamship whenever the time came, and charge the balance to capital?—I have never said so.

4759. No, but that is what Sir William said, I understand. Do you say that was wrong—that that was a mistake?—Are you speaking of the Great Western?

4760. Yes. That is not the Great Western method?—I should say not. I should not do it.

4761. As far as the Great Western are concerned, they have added 80 per cent. to the renewal charge in respect of steamships, just as they have in respect

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[Continued.]

of permanent-way and rolling-stock?—Yes. If I replace the boat with an exactly similar boat to the one that has gone out, I should consider that was a true charge to depreciation fund. That is my opinion.

4762. *Mr. Jepson:* But if it was a more expensive steamer that replaced the one that went out, would you write the one that went out to depreciation and charge the higher capital of the new boat to capital account?—It all depends what that more expensive boat meant. If it was the same boat, but owing to the higher cost of wages and material it cost more, I should charge that to the fund; but if it was a larger unit then I should feel justified in charging the extra cost of that larger boat to capital, and taking the other out.

4763. *Sir Douglas Hogg:* You are an accountant and I am not, so that if my question is wrong you will put me right. But does not that involve this, that when you are depreciating your pre-war permanent-way, rolling-stock, steamships and so on, but adding 80 per cent. to your per-war charge, if in fact the life is what you estimate you will write off a great deal more than the whole cost of the article?—You will find enough money to replace the unit.

4764. And you will have written off a great deal more than the whole cost of the article?—You will have enough to replace the unit.

4765. I daresay you will; but try and answer my question?—I would rather have it my way if you do not mind.

4766. Is mine wrong?—You would write off more than the original cost of the thing, but you would not have in your fund enough money to replace the unit.

4767. Because the 80 per cent. only began in 1923?—Yes. But take it this way. An engine, we will say, cost £100 originally. To-day it would cost something over £200 to replace. If I continue the 1913 provision obviously the fund will not give me enough money to replace that engine.

4768. It will give you the £100?—It will give me £100. Where am I going to find the other £100?

4769. You must not ask me questions, but I can easily tell you. You will find it out of capital account, I imagine?—Then you would say to me it has not enhanced the value of the undertaking.

Re-examined by Mr. CLAUSON.

4784. And that 80 per cent., I understand—correct me if I am wrong—is the addition you made to the provision for cost of renewal, is it not?—Yes, that is so.

4785. How about repairs?—Repairs are what they actually cost. The Great Western have no provision for repairs. Whatever we spend we charge in the Abstract. It would be, of course, very much more than 80 per cent. increase over 1913, because we all know that wages are something like 150 per cent. up, and materials between 70 and 80 per cent. Now, it is equally well known that it is something like two-thirds wages and one-third material in the Maintenance Abstracts. If you take two-thirds at 150 per cent. and one-third at 70 per cent., you get a figure of increase over 1913 of about 123 per cent. So far as the Great Western are concerned, I should say their increase over 1913 is about that figure—much more than 112, anyhow.

4786. There is a greater factor for labour in repairs than in renewals, is there not?—Certainly.

4787. And accordingly, when you are comparing what would be the proper provision for 1923 for repairs, renewals and depreciation—in fact, maintenance generally in the wide sense—with 1913, the right figure to add would not be 80 per cent., but would be some higher figure?—Yes, much higher.

Lord Advocate: That is the case for the railway companies.

Solicitor-General: On behalf of the Ministry of Transport I have been considering exactly what part I can best take in these proceedings to facilitate matters and to help the Tribunal.

4770. Quite true?—And I should not get any allowance upon it.

4771. Quite true. We are not troubling about the allowance for the moment?—I am.

4772. I am troubling about the effect on the user of the railway. Your method would be to write off depreciation at such a cost that you have written off the cost of £100 at £180?—It will come to this, that I ought to have for the extension of the life of the asset £200 to replace it.

4773. £180 to be accurate?—Yes.

4774. You will have written off the cost of a thing which cost £100, £180 by the time it is worn out?—I shall have got £180 to replace it.

4775. That would be the result, but that would be the way you have done it?—Yes, that is so.

4776. *Mr. Jepson:* I should like quite to understand this. In your 1923 accounts you have got the extra 80 per cent. put away as depreciation or in renewals?—Yes.

4777. In the various Abstracts?—Yes.

4778. Is that the first year that you started altering the amount put away as compared with 1913?—No; all through the Control the Government allowed us to increase the provision by the increased cost of work carried out.

4779. Did that refer to the 15 per cent. of which you told us just now?—That was the allowance they made on that part of the renewal provision which was not carried out. Suppose we carried out two-thirds of the renewal programme, on the remaining one-third we had 15 per cent. from the Government during Control. Now that work has got to be done and that was the reason we strengthened that fund out of the compensation.

4780. I follow that?—We had only got 15 per cent. and we had to increase it to give enough in the fund to replace the asset.

4781. *Mr. Locket:* Those amounts that you allocated in that way were not based on any definite percentage, were they?—No.

4782. They were just lump sums?—You mean the addition to the fund out of the £10,000,000?

4783. Yes?—That is so.

The position now is this: You will remember that at an early stage of these proceedings—indeed before they were actually heard here—a Memorandum called F.4885 and another Memorandum called F.5210, were put in giving the views of the Ministry of Transport. Now of course certain evidence has been given and we have reached a point, I think, at which all the parties are in agreement that certain outstanding questions of principle must be determined before the Tribunal can usefully proceed to actual figures and comparison of accounts.

Mr. Wood, who is the accountant of the Ministry of Transport, has himself formulated a number of questions which he thinks, not only in the interests of these proceedings, but for the use of the Ministry in future proceedings which will take place from time to time under the Act, will have to be asked. I think the most satisfactory way, if you would agree, would be that at some stage of the proceedings I should ask permission to put Mr. Wood into the box, when he would explain perfectly impartially—because of course the Minister is absolutely impartial in this case—merely what seemed to him to be some of the outstanding questions arising under the section which ought to be determined.

It did seem to me that it would be perhaps fairer to my friends on both sides of me if Mr. Wood's view and the questions which he thinks ought to be submitted should be put in before Sir Douglas Hogg addressed the Tribunal, so that he would have in his mind just what the views of the Ministry were and what questions they wished to put to the Tribunal. But I understand—I made the offer—that, nevertheless, for other reasons which do

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influence Counsel from time to time, Sir Douglas would find it more convenient personally to address the Court now. The offer, if I may so call it, is, however, still open and Sir Douglas would prefer that Mr. Wood should go into the box now, and you wish to hear him—because it is a matter for you; we have no right, as I understand, to put Mr. Wood into the box; it is a question whether you think it would help the Tribunal—that could be done. My own view is that those Memoranda want some amplification now, and it would come better from Mr. Wood than from me, because he would be able to explain and answer any questions the Tribunal wished to ask him. But it is a matter of indifference to me whether that takes place now or after Sir Douglas has addressed the Court. Perhaps he will say what he proposes to do.

Sir Douglas Hogg: I have been considering with my learned friends what our position should be and we have come to the conclusion that the points which have to be determined at this stage, now that the figures have been explained, are really points for argument, rather than for evidence, and though I have proofs from various eminent persons, it seemed to me that if I were to call them they could not do more than state in evidence points which I wanted to submit in argument against some of the contentions of the railway company. Tactically, if one wanted to be tactical, I suppose in those circumstances the Lord Advocate would close his case and I would reply upon it. But it seemed to me, and I intimated it to him, that it would hardly be fair, nor would it be the most helpful course to the Tribunal, because he would not have my points fully developed and probably the Tribunal would prefer and think it right that I should formulate my submissions and then leave him to have an opportunity of dealing with them after he has heard them elaborated.

That, if it suits the Tribunal, is also convenient to myself, subject only to this, that if there should be some fresh points which the Lord Advocate develops, possibly I might not make a lengthy formal reply, but I might be able to add a few words upon any matter he brought up. I should, of course, do so as shortly as possible.

Therefore, what I was rather proposing was that I should now formulate to the Tribunal such questions as I think emerge as a result of this discussion, and offer some few observations upon them, and that then the Lord Advocate should have an opportunity of dealing with them. My friend the Solicitor-General has to call a Ministry expert, really, I gather, to elucidate the Ministry's view upon certain points, and probably that would come conveniently after I have stated mine. But there are other interests who will at some date have to address the Court.

President: Are none of you calling any evidence?

Sir Douglas Hogg: I am calling none.

President: Is Mr. Thomas?

Mr. F. G. Thomas: On the whole, my view would be in accordance with that of Sir Douglas Hogg, namely, that no evidence on the points would really assist very much in the elucidation of these matters, which I think, now that we really understand what the issues are, are almost entirely questions of argument. I should hope, with your permission, to be able to address some observations after Sir Douglas Hogg on such matters of argument as would appear to offer assistance to the Tribunal.

President: Are there any other opponents proposing to call evidence?

Lord Advocate: Might I say a word as to the future conduct of the proceedings. I appreciate what has fallen from Sir Douglas Hogg in this matter. Of course, we will study his convenience in every way.

Personally, I would confess I would rather have heard the Minister's view, as the friend of the Court, before he addressed you—because I am expecting to get considerable assistance in the formulation of my side of the question from the neutral intervention of the Minister—in order that one might appreciate

what were the points of importance which had emerged in the view of the Minister. It seemed to me that if at the end of the day I was to submit, as I hope to be able to do, proposals for the acceptance of the Tribunal, it would be unfortunate if I framed those in the absence of the assistance which we hope to derive from the learned Solicitor's presentation of the official view. Certainly, I should rather have addressed the Tribunal after the Solicitor had formulated the points which he considers material for our consideration on both sides of the bar, as well as for the consideration of the Tribunal.

Then I understand the programme we shall pursue will be that Sir Douglas will now address the Tribunal; then that Mr. Thomas and anyone else who desires to do so will address the Tribunal; then the Solicitor will make his address and deal with Mr. Wood's evidence, and then that I should be in a position to reply on the case, and if I am indiscreet enough to disturb any other sleeping dogs I think it would certainly be quite right that Sir Douglas should endeavour to deal with them.

Solicitor-General: I propose to put what I have to say in the form of this Mr. Wood's observations. I think that would be a convenient way. He will make any observations he thinks necessary. It is really an amplification of the memoranda which are already before you.

Lord Advocate: Then in order to clear the way, is Mr. Wood to make a statement, or is Mr. Wood to be examined, because, as one knows, there are certain rules, with which no one is more familiar than you are, Sir, with regard to the treatment of a Government official who is presented for the assistance of a Tribunal. In Parliamentary proceedings he is not cross-examined; one can only put questions through the Chairman in the usual way. But if he appears as a witness I should like to know the Solicitor-General's view as to whether he would expect us to cross-examine.

President: I am not quite clear when Mr. Wood, according to the present arrangement which you seem to be coming to, will be heard.

Solicitor-General: My suggestion was that he should be heard now.

President: But a little discussion has taken place, and it seemed as if the parties were now suggesting that Mr. Wood might be heard with advantage at a later period.

Lord Advocate: I certainly would have preferred the other way, but I am not going to stand in the way of the convenience of my learned friends.

Solicitor-General: I understand a third alternative meets with Sir Douglas's approval, namely, that he should make his address now. With regard to Mr. Wood, if I may explain what it really is, he would amplify the memorandum which is already put before the Court. It is merely a question that certain points have emerged and there are certain matters to which he wished to draw your attention. I do not think he should be regarded as a witness, but merely as amplifying that memorandum. I understand, however, that Sir Douglas would prefer to address you now, and my suggestion would be that I should interpose Mr. Wood after Sir Douglas Hogg has addressed you.

Sir Douglas Hogg: All right; that will do very well.

Lord Advocate: That would be quite convenient to me.

President: That would not embarrass you, Lord Advocate? You would fall in with that view?

Lord Advocate: That will not embarrass me at all.

President: Then may we have the pleasure of hearing you now, Sir Douglas?

Sir Douglas Hogg: Sir, in approaching the first consideration of this part of what I feel will be a lengthy inquiry, what I am seeking to do is to focus, as far as possible, the questions upon which, as it seems to us, the decision of the Tribunal will facilitate the ultimate discussion as to the figure to be taken for standard revenue, which is, as we all know,

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the starting point from which the rates and charges have to be fixed.

In discussing those points and formulating what I suggest as being the relevant questions, I would only like to say one word by way of preface, and that is this. The Lord Advocate, in his opening address, quite truly pointed out that in previous statutory fixations of charges for railways, the charges to be fixed were maxima, and therefore, quite obviously, it was to the interest of the railway companies—quite legitimately; I am not in any way criticising it, of course—to put their case as high as it could be put, so that they could get the maxima fixed as high as it was possible for them to fix them, so that even if it was more than they ventured to hope, or indeed desired, they would still have no difficulty in meeting the legitimate demands of traders by not charging the full amount to which they were entitled, and, as we all know, that was an opportunity of which they constantly availed themselves.

I am not quite sure whether the railway authorities quite realise the difference which is created by the present Act of Parliament, which does not set up a Tribunal to fix maxima, but sets up a Tribunal to fix charges, because if, unhappily, the railway companies should induce the Tribunal to fix too high charges they cannot alleviate that misfortune by charging less, and the traffic will suffer a burden which it cannot bear, with the consequent loss, not only to the trade and industry of the country, but also, of course, to the railway companies themselves.

It is, of course, idle for anybody who appears in this case to fail to appreciate what I think I certainly have always appreciated, that in presenting a case to this Tribunal or to the Railway and Canal Commission, the railway companies have always been at a great advantage, because they have, through their witnesses, at their disposal all the figures and documents and rates and results which they desire; they have at their disposal, of course, as their witnesses, the men whose whole lives have been spent in dealing with those very figures, and anybody who comes from outside and has to do his best to pick holes in their case out of such information as he can glean from a perusal of their accounts is at a very great disadvantage as compared with them.

Fortunately, at the moment, at any rate, it is not my duty to discuss the details of the charges or of the figures which have been brought forward, but to discuss only matters of principle in the light of which these details would obviously be adjusted. My friend, the Lord Advocate, quite rightly, I think, centred his attention in his argument on Section 53 of the Railways Act of 1921 as being really the charter under which this inquiry is proceeding. I propose, if I may, to follow his example, and to take Section 53 and pick out from that section, as one goes through it, the matters with regard to which a decision of this Tribunal is, in my opinion, important.

Perhaps I ought also to say this, and I think, with regard to this, I ought to invite my learned friend's co-operation. Technically, of course, the decisions which the Tribunal is now going to give upon the question, whatever they ultimately have to consider, are merely interlocutory observations in order to guide the parties in framing their case on the detailed charges. The actual decision will be ultimately what certain charges shall be made for certain different kinds of traffic. But I think it would be helpful if the Tribunal would formulate its views upon these points and that we should then embark upon detailed investigation of all the charges in the light of its rulings. Then when the decision has ultimately been given, if either party should desire to take the decision of the Court of Appeal upon one of the points of principle upon which the Tribunal has gone, the whole work would not be wasted, should it unhappily turn out that the Court of Appeal did not agree with this Tribunal.

I venture to think it would probably be in the interests of everyone that if either party should desire the Court of Appeal's view upon any points

of principle which we have been discussing and upon which the Tribunal is now going to pronounce, it would be far better that the appeal should be taken at once, after its decision has been given, instead of waiting until after the exhaustive inquiry has taken place. I fancy that that very likely can only be done by consent, but I imagine that I am only suggesting what the railway companies, equally with ourselves, would desire, because, quite obviously, there is a risk of a very grave waste of money if we wait until the end of the inquiry before we ask the Court of Appeal if the principles upon which you proceed are the right ones or not.

Now approaching then the consideration of Section 53, the Lord Advocate pointed out that what you have to get are figures which under certain conditions will yield an annual net revenue equivalent to the aggregate net revenues for the year 1913 of the constituent and subsidiary companies. Therefore the first question which in my submission the Tribunal ought to consider is: What is meant by the expression "net revenue"? That I venture to formulate as the first question which the Tribunal should be asked to determine.

The railway companies, as you will remember, have taken the net income as shown in Account No. 8, and they then made from that net income certain deductions of the sum of the interest charges which are shown in Account No. 9, and they said that the difference between those figures was the net revenue.

On the other hand, I venture to submit that there is, at any rate, a good deal of force in the view which I think Sir William Plender was inclined to adopt, that "net income" and "net revenue" are very nearly interchangeable expressions, and that the expression "net revenue" ought very likely to be taken as having the same meaning as the word "net income" in Account No. 8, which is a revenue account. That would involve, of course, that the railway companies would not be able to deduct the various charges for interest on superannuation funds and other things. As these funds have grown very considerably between 1913 and 1923, the effect would be that although the figure in 1913 would be larger than is arrived at by the railway companies, the corresponding difference in 1923 would be much greater and the advantage therefore would lie with the railway companies. That, Sir, I venture to think is the first question which has to be asked: What does "net revenue" mean. Are the railway companies right in saying that it means something different and less than "net income" as shown in the statutory accounts?

If the railways are right in saying that the statutory accounts were being regarded by the Legislature as the conclusive and vital starting point, then my submission is reinforced, as I venture to suggest, by reason of the fact that you never find in the statutory accounts the expression "net revenue" at all, but you do find a revenue account with a net figure at the end of it. Presumably, therefore, that must give the railways, if they are right, the net revenue. That is the first question I would like to ask the Tribunal to consider, and in considering it, if the Tribunal should come to the conclusion that the net income and the net revenue are not the same, but that there is a distinction to be drawn, then I would venture to suggest that there is just as much reason in proceeding on the basis of the 1913 accounts for adding to the deductions which have to be made such sums as the directors thought were properly to be debited to that year's accounts for such matters as pensions, electrification revenue charges, specially earmarked reserves and so on—you will remember the series of figures in the case of the North Eastern particularly—there is just as much reason for including those in the matters that you should deduct in order to arrive at the net revenue as there is in the case of the charges on superannuation fund and things of that kind. They were all matters which I have no doubt the accountants have rightly said to us were not matters which need necessarily have been

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paid out of 1913, because they had not all been ascertained in 1913; but they were all matters which in 1913 the directors had ascertained as being such contingent liabilities, if you will, as had been incurred in that year, and which had attained such a measure of probability that it was prudent in the ordinary course of business to make provision for them out of the 1913 accounts.

Pensions, which I think is the first item, is a very good illustration. What amount of pension was given was, as one of the witnesses told us, a matter for the consideration of the directors, because pensions generally in those days were *ex gratia* payments. They were not bound to make any payments at all, but if the directors thought that owing to the different view which was then emerging as to the responsibilities of the employers to their employed, or owing to the growth of wages and the cost of living or any other reason they felt it right to make provision for pensions to their then existing servants on a more liberal scale when their time of service expired, and that it was right for them to set aside a sum of £50,000 under that provision out of the 1913 accounts and that that was the fair amount in their judgment 1913 ought to bear in making that provision, then in my submission in arriving at the net revenue for the year 1913 there is no reason why that provision should be excluded and the revenue should be treated as being something larger than it really properly was when you make such provision out of the receipts for the year as the directors thought proper for the purpose under consideration.

The second question is one in regard to which I am not quite sure that I myself am quite clear about the position now adopted by the railway companies. The question which I had proposed to ask as the second question is: Are the 1913 accounts conclusive? The reason I propose to ask that is because I found in the Lord Advocate's opening speech on page 11, as almost the first point which he elaborated, this. Beginning at the top of page 11, after having referred to Account No. 8 in the 1913 accounts, he says this: "These figures have been the accepted basis of the published accounts upon which all transactions between the Government and the railway companies have proceeded; and it is our submission that there is no other source to which one can go, and, indeed, that there is no other source to which one ought to go, for the purpose of ascertaining what is the net revenue of the companies." Then just the next sentence but one: "I emphasise that point because it may be that you will find that the Traders will ask that the published accounts be not taken, or, at any rate, be not taken as conclusive, and that investigation should take place of the printed accounts for the purpose of inquiring into the correctness of these accounts. So far as we are concerned we shall most strenuously oppose any such suggestion." and there, he said, possibly came one of the questions upon which you would have to formulate your judgment. Then he goes on to say: "We therefore put it as a cardinal point in our case that the source from which the figures are to be taken, and taken without question, are the published accounts of the railway companies."

Lord Advocate: May I intervene to say that, after hearing some of Sir Douglas Hogg's cross-examination, I do not think that would be a fair position to take up. I think the highest tribute I can pay to my learned friend's cross-examination is that it is manifest that we could not ask that 4 per cent. should be added to these accounts and at the same time preclude him from establishing anything that he can establish as well as we can establish our 4 per cent. I do not think it would be fair to do that, and therefore I drop that contention as a contention of law.

Sir Douglas Hogg: That rather relieves me from asking that question, but I am still not clear as to how it was the 1913 accounts are to be regarded as having any binding effect. May I say that, because I think at any rate it will possibly define our position.

I recognise the Lord Advocate is quite right in what he says, namely, that to investigate the 1913 accounts of all the subsidiary and constituent companies would be an enormous and very lengthy task, and no doubt very expensive to the parties and a very great strain upon the patience of the Tribunal. We do not want, I hope, to be unreasonable in this or in any other matter. What we are concerned about is to be sure that the accounts with which the future years are to be compared are compiled in the same way, and are subject to the same charges in respect of expenditure and so on, as those later years with which they are being compared. In other words, we are concerned to see that like is being compared with like.

You will remember—I need not take up time by citing passages in the evidence—that we have heard that the estimated lives of various portions of railway equipment have been taken at varying figures by the different companies. We have heard that there have been created hidden reserves—no doubt quite rightly—in order to strengthen the position of the companies. Unless we have some assurance that the later years are being dealt with in the same way in regard to these provisions for reserves and depreciation and maintenance and renewals and the like, I see great difficulty in starting with the 1913 accounts. But if we were given an assurance that when the later years were being compared with 1913 we should be at liberty to challenge the correctness of the later years, even though in itself the provision was not unreasonable, if it were made on a different basis from that on which it was made in 1913, then I think we should be content. I mean, if I may take an illustration, suppose locomotives were given an average life of 30 years in 1913 and were given a life of only 15 years in 1924. It obviously would not be fair to ask that in order to make the 1923 revenue up to 1913 you should make such charges for 1923 as would give you the same revenue as 1913 with twice as much allowance for the renewal of locomotives in the one year as in the other. You are not really comparing two things which are on a parallel. If we could get—and I am quite willing to consider any reasonable suggestion—some way by which we should be assured that the later years would be put upon the same basis as the year with which they are being compared, then I do not think, as far as my clients, at any rate, are concerned, there would be any difficulty in arriving at some arrangement.

President: Or if it was different, you might have the opportunity of challenging it and putting upon them the onus of supporting it?

Sir Douglas Hogg: Just a little more than that. Suppose the 1923 method were right, but the 1913 method were wrong. If we had got the 1913 account as a fixed basis from which we could not depart, we could not prove that 1913 was wrong, and we could not get the 1913 account altered, although it was proved to be wrong, because that had been fixed. We must not be put in that dilemma. We must be given the right to adjust the 1913 figure so as to bring it on to the same basis as the 1923 figure, or else we must alter the 1923 figure, though it be right, in order to put it on the same basis as the 1913 figure. I do not mind much which of those methods is adopted, but I do venture to submit to the Tribunal that we ought to have the right secured to us in some way of ensuring that the year for which the rates are being fixed is having its revenue charged on the same basis as the year with which it is compared; that is to say, the same basis as 1913.

I venture to think that that in principle, at any rate, cannot be wrong, and how it is arrived at I do not mind. But I do venture to submit that that must be assured to the users of the railway, and until it is you are not really doing what the statute directs you to do, in comparing the net revenue of two years, because you are not meaning the same thing by "net revenue." I have formulated the question in the form of whether the 1913 accounts are conclusive. That contention has now been quite frankly aban-

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done by the railway companies, and I propose to go on to work out that, if they were, the 4 per cent. had to be disallowed; but I am relieved from that by what my friend the Lord Advocate suggested. All I desire to say is that I do submit that in some way it must be ensured, without unduly trespassing either on the patience of the Tribunal or the pockets of disputants, that the 1913 accounts, or whatever the year is—the standard year accounts—and the accounts for the year with which they are being compared, have been calculated in the same way and that similar provisions have been made in the two years for the same things.

Now the third question which I want to formulate is as to the meaning of the expression “so far as practicable” which appears in Section 58. My learned friend the Lord Advocate rather—if he will forgive me saying so—created those words as mere surplusage. His expression on page 5 of the short-hand notes, about half way down the second column, was: “Then there is the further qualification ‘so far as practicable.’ I do not know that that is more than the usual exhortation to do the best you can. No man can do anything which is impracticable, but the Legislature has chosen to remind us that we are human here and has accordingly put that in.” That is practically saying that they do not mean anything. Now my submission is that they do have a very real meaning, especially when one looks at Sub-section (2) of Section 58. In Sub-section (2) you will remember the Tribunal is expressly directed, when fixing charges in pursuance of the provisions of the section, to have regard to the means which in their opinion are best calculated to ensure the maximum development and extension in the public interest of the carriage by railway of merchandise and of passengers and their luggage, and accordingly to ascertain as far as may be practicable the effect which the existing charges, or any of them, have had upon the merchandise or passenger traffic to which they are applicable, and in particular whether the application of such charges has tended, or, if continued, would be likely to tend toward causing the increase or diminution of the said traffic.

I venture to submit, therefore, that when in Section 58 (1) the Legislature inserted the words “so far as practicable” it was not a mere pious exhortation to do the best you can, but was a very real direction and warning that the Legislature realised that it may very likely turn out that under the altered conditions now prevailing, you could give to the railway companies such a revenue as was equivalent to the sum of all the matters referred to in Sub-section (1) without crippling and harming the trade and industry of the country, and without tending to affect, and adversely affect, the merchandise or passenger traffic on which the railways depend, and that although it is true that so far as practicable you are trying to give the railways the same revenue as they had in 1913, plus these additional allowances, it might well happen that the Tribunal would come to the conclusion that it was not practicable to do that under existing conditions; and if that were so, then they would have to make such allowance as was necessary in order to yield the best result without affecting the maximum development and extension in the public interest of the carriage by railway of merchandise and passengers and their luggage. In other words, the Tribunal is there directed by the Legislature to bear in mind that the railway companies are not the only people interested in the rates which are being fixed, but there is the public interest also to consider; and that it is against the public interest that the industry of this country, or the free conveyance of passengers and merchandise in this country, should be unduly fettered and restricted by excessive charges.

And if it should appear, when the evidence comes to be adduced, that the charges which are necessary in order to give such a sum total as is aimed at by Sub-section (1) would be so excessive as to cripple and prevent the development and extension in the

public interest of the carriage of passengers and merchandise by the railways, that would be sufficient reason for the Tribunal to say: “It is not practicable to give you this total revenue and you will therefore have to be content with something less. We will give it to you as nearly as we can, in the public interest and having regard to the factors to which we are directed to pay attention, but it is not possible to give the maximum which the Legislature desired you should have if it were practicable.” I submit that the words “as far as practicable” have a very real and material meaning in the practical working out of these rates and charges. That, then, is the third question which I desire to call to the attention of the Tribunal.

Then there was a Question under 58 (1) (a) which I understand from my learned friend the Solicitor-General he also intends to discuss. I cannot help feeling that the question under Section 58 (1) (a) is a question which primarily concerns him more than myself; because, apparently, we have to take a sum equal to 5 per cent. on capital expenditure forming the basis on which interest was allowed at the end of the period during which the constituent and subsidiary companies were in the possession of the Government—and that, of course, is the fact. What was the capital expenditure on which interest was allowed at the end of that period, which the Government could tell us? But there is a question as to what is meant exactly by the expression “on which interest was allowed at the end of the period during which,” which means on the 15th August, 1921. Does that mean that you are limited to giving the 5 per cent., in making an allowance under 58 (1) (a), in respect only of capital expenditure on which interest was allowed on the 15th August, 1921, or are you entitled to ascertain what sum in July (let us say) of 1924 the Government ultimately decided they will allow interest upon up to August, 1924? The difference, of course, is an obvious one. The figures are probably easily ascertained in either event, and very likely differ very materially. It is, in my view, to some extent a minor question, not without importance, of course, but comparatively a minor question, for the reason, no doubt, that a great deal of what was disallowed under 58 (1) (a), if the 15th August, 1921, is to be taken as the right date, would fall under 58 (1) (b); therefore the only difference would be the difference between such allowance as was made under 58 (1) (a), and such allowance as could be recovered under 58 (1) (b). But it is a question which has to be determined, and one which, I believe, the Solicitor-General is going to discuss at greater length when his turn comes.

I come now to 58 (1) (b). Curiously enough, as was truly said by the Lord Advocate, although much the most important figure which we have to get at here is the 1913 figure, because all these additions are comparatively small—much the most difficult questions seem to emerge when we come to (b) and (c), where the figures are comparatively small, although, of course, not without importance. The first question which I want to ask the Tribunal to determine under 58 (1) (b) is—What is the capital raised or provided, within the meaning of that section? Now, it was interesting to notice, when the Lord Advocate was opening, and indeed when his witnesses came to support his opening—as they most gallantly did—that in the view of the railway companies those words mean nothing at all. The railway companies’ view is that what they have to get is such an allowance as may be necessary to remunerate adequately any expenditure on capital account incurred since the first day of January, 1913; because, they say, all you have to do is to find out how much we spent on capital account since that date, and it must have been either raised or provided, for it could not have been otherwise obtained. So the words are meaningless, and, indeed, the Lord Advocate said so; and I think one of their witnesses said so. That is not the views which the users of the railways take.

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Our submission is that the change of language in 58 (1) (b) from 58 (1) (a) and 58 (1) (c) is very significant and has a very real meaning. In (1) (a) what you have to allow is 5 per cent. on the capital expenditure forming the basis on which the Government allowed interest. In 58 (1) (c) you have to allow such allowance as appears to you to be reasonable in respect of capital expenditure on works which enhance the value of the undertaking. Which we come to (1) (b), that is not what Parliament has provided. It does not give them such allowance as appears to be reasonable in respect of capital expenditure; but what it directs you to give is such allowance as may be necessary to remunerate adequately any additional capital which may have been raised or provided in respect of expenditure on capital account. Therefore, in my submission, Parliament quite clearly realised that there was a great deal of expenditure on capital account in respect of which the railway companies had not either raised or provided additional capital. It was not the capital expenditure which had to be taken into account; it was the capital which had been raised or provided in respect of expenditure on capital account, to which alone the Tribunal had to have regard.

The learned Advocate, in his opening, said that the expression "capital which may have been raised" was easily understood. He said that meant capital which had been raised from the public by the issue of shares, and so on. He also said "capital provided" must mean something else, and it is meaningless unless it means—as he asked the Tribunal to say it meant—capital which came from the railway companies themselves. Of course that sounded rather plausible; because naturally "raised and provided," the words being used, could not have probably the same meaning; and if, therefore, you found that there was no other meaning to be given to the words "capital provided" than the one which he suggested, that would be a powerful point in support of his argument. When we look at the Ministry of Transport accounts for 1923 we find that there is a very good reason for using the two words "raised or provided" without going outside the natural meaning of the language and giving to it what I submit is the extravagant meaning which the Lord Advocate asks you to attribute to it. Because we find, under the heading of "capital," first of all the expenditure, then we find the receipts, and that is classified under two heads—first of all comes "receipts from capital issued"—that the Lord Advocate says means capital which has been raised. Then we find "receipts from other sources," and it amounts, not indeed to an enormous sum, but to a sum in 1913 of over £3,000,000. The 1923 figures had apparently not been adjusted at the time when this document was being drawn up, but at any rate it was a figure which ran somewhere into millions.

My submission to the Tribunal is that what you have to ascertain is what capital has been either raised or provided towards the capital expenditure incurred since January, 1913. You will find, first of all, how much capital has been raised—that is to say, how much has been obtained from the public for debentures, shares, and so on. Then you will find how much has been provided from other sources. Apparently in 1913 the preliminary figure was something over £1,000,000. Again, it is not without interest to notice, as you will remember, that I found on looking into the railway companies' own books that they themselves used the expression "capital provided" in distinction to the capital raised in connection with some of the money which had been provided by some of these large companies in order to finance some of the lesser undertakings. So that it is not necessary to go to the explanation which the learned Lord Advocate asks you to accept, in order to find a perfectly intelligible and natural reason why Parliament did not say merely "capital which may have been raised," but also brought in "or provided"; because there was a substantial

amount of capital which may have been provided in respect of expenditure on capital account, although it had not been raised for that purpose. But when the learned Lord Advocate says that you have to take all the money which was spent, he is, as I have already pointed out, ignoring the expression "capital raised or provided" altogether, and he is asking you to give remuneration, not on the capital which has been raised or provided, but in respect of the expenditure on capital account incurred regardless of whether the capital had been raised or provided at all. My submission is that those words do not bear the meaning which he seeks to put upon them, and that the right answer of the Tribunal to this question is to find out what capital has been raised, find out what capital has been provided from other sources, and then to give a remuneration sufficient to remunerate that additional capital adequately, provided that it has been raised or provided in respect of expenditure on capital account since January, 1913, unless the expenditure has not enhanced the value of the undertaking.

The point, of course, is a material one, and I think probably the shortest way of putting it is that you should look at the capital account under the 1911 accounts. You find there, on the receipts side, how much capital has been raised or provided; and when you compare the 1913 with the 1924 or 1925 (whatever it is) figure, you have a difference which is the capital that has been raised or provided. It is not the same as the capital expenditure, because, as has been pointed out, and as appears clearly on this account, the railway companies were largely overspent in 1913 and in 1923, and the capital raised or provided to meet that expenditure is something alone. I submit that the capital receipts figure is the right figure to take; because anything that is not in the capital receipts is not capital which has been raised or provided, and, indeed, does not exist as capital at all.

I would like to point out, if I might, what in my submission was one of the fallacies underlying the Lord Advocate's argument. What he said was: You can take the free reserves, and, inasmuch as the money must have been spent and inasmuch as this free reserve money was the shareholders' money to do what they liked with when they chose to spend it upon this capital expenditure, what they were really doing—to use his own expression—was, they were really capitalising some of their undistributed profits. Now, if they were capitalising some of their undistributed profits, I should be disposed to agree with him that the company was then providing capital in respect of the expenditure on capital account; but, of course, it is the very thing which they are not doing; and, as Mr. Quirey rightly pointed out when I was asking him questions on Friday, it was not what they were doing. You can capitalise reserves. It has been done by methods which the Revenue do not altogether appreciate, but which have been held to be quite valid. For instance, you can do it by issuing bonus shares, using some of the reserve. In a famous case, as you will remember, what they did was that they took the reserves of the company's moneys which were undistributed profits—to use the Lord Advocate's expression—they capitalised that, they applied them to payment for preference shares, as it was in that case—but it does not matter whether they were preference shares or ordinary shares—and they issued to their shareholders those preference or ordinary shares, in proportion to their share holding, as a bonus. It was held that the company had effectively, by doing that, capitalised so much of their undistributed profits as was represented by those preference shares. I have no doubt the railway company, if it had statutory authority to do it, could capitalise its reserves, turn them into capital, earmark them irrevocably as capital, and then would claim that that money was capital which had been provided in that way.

Indeed, I think there is one instance given—I believe in answer to me, when I was asking about

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something quite different—in which it was actually done. It is on page 138 of the shorthand notes, towards the end of Mr. Williams's evidence, when I was asking him, with regard to the Great Eastern Railway, what were the capital receipts from other sources which appeared in the Ministry of Transport 1923 figures, and he said this at Questions 2653 to 2660: "(Q) I see that there is a provision of capital for the redemption of other debentures which had been previously issued, I suppose? (A) It is a provision out of revenue in one case. (Q) What do you say about it? (A) It is a provision made out of revenue to extinguish the debenture stock. (Q) I suppose that was under the provisions of the issue? (A) Yes. (Q) That in each year there should be a provision out of revenue to meet this capital expenditure? (A) Yes, that is so. (Q) And, therefore, as soon as that was done it would properly come in as a receipt on capital account? (A) Yes. (Q) I follow. It would be irreversibly appropriated to capital by this entry? (A) That is so. (Q) So that, apart from the capital which you raised from the public, there were certain moneys which you provided for capital account in that way? (A) Yes. (Q) And unless there were some stipulation under Section 58 for capital which was provided from other sources as opposed to capital raised from the public, you would not have been able to get any remuneration in respect of that item? (A) I think not."

That, of course, is a perfectly possible way of capitalising your undistributed profits. You take moneys which are profits; you appropriate them to capital account—in this case by buying some shares, and in the other case by creating shares in respect of that and applying the money to paying up the shares, and they are then capitalised. But when you do not do that, but keep, as Mr. Quirey pointed out he did, these reserves untouched in your balance-sheet, remaining as undistributed profits so that at any future time you can distribute them by way of dividends if you like—that is the test—then you have not turned them into capital, you have not provided capital; what you have really done is to use some money which is available in your bank which is only there because you have such enormous reserves on various accounts; you have temporarily used that money pending the provision of capital. But it is obvious that you have not provided them as capital, or—to use the Lord Advocate's quite correct expression—you have not capitalised them; because, if you had, you could not distribute them as dividends; the money is not available for dividends when it has become capital; it is only the profits, and not the capital, which you can distribute as dividends. And the accountants were quite right when they told us that so long as you keep the reserves in that form in the balance-sheet, as free reserves, free for distribution in profits or for any other purpose, you do not turn them into capital; you do not capitalise them; therefore it could not be said that you had provided capital out of those reserves when you used what really was not that particular money, but used what happened to be a big bank balance which you had at that time, and which was only so big because it happened that among your various assets you had a certain amount of undistributed profits.

That is the real fallacy of my learned friend's argument. I should agree with him, if they had capitalised these reserves, they would have provided capital by doing it, as the Great Eastern did. What I submit, and what I say is beyond argument, is that they have not capitalised these reserves; they have merely used such moneys as they had got, in order to meet capital expenditure, pending the time—which will no doubt come in the long run—when they would provide capital for that capital expenditure. At present their total capital expenditure is in excess of their capital receipts, which shows that they have not in fact provided capital to meet their expenditure. The excess of capital expenditure over

capital receipts is the difference between the expenditure on capital account—to use the statutory expression—and the capital raised or provided towards that expenditure. The difference of the two is the capital expenditure in excess of capital receipts; and, so long as they are unable to show in their capital receipts that they have raised any sum to meet that expenditure, they cannot say that any capital has been raised or provided for that purpose.

That is a matter of cardinal importance in the discussion of this subsection; and so far as I understood him—and I hope I am not doing him an injustice—the only answer which the Lord Advocate could put forward was: "Well, if you do not give this artificial meaning to the words 'capital raised or provided' it may happen that some capital expenditure will not get an additional allowance." It is possible that it may not. And if you proceed on the system which some of his witnesses said was the right system, that the railway must always get it somehow, and, whatever else happens, the one thing that could not happen was that the railway should not get an allowance, then of course there is very great force in their argument. But it may be that Parliament did not altogether work out the effect of using this language, or it very likely may be that Parliament may have thought that, just as the free reserves came to the benefit of the trader if they were used in investments—because it is common ground if it is invested in War Loan, for instance, the money which comes in is money for which the railway companies must give credit—so if they were to be used in other capital expenditure there was no reason why an extra charge should be put on the trader in respect of it.

Mr. Cash was good enough to work out for me a rather interesting little illustration of the effect of the railway company's contention, according to whether or not the money was used for investment—the free reserves were left uninvested—or whether they were used to meet expenditure on capital account. Perhaps I might read it.

President: Do you object to its being read, my Lord Advocate?

Lord Advocate: Not at all, Sir.

Sir Douglas Hogg: It is only meant as an illustration. This is Mr. Cash's own illustration. He says: Let us assume—taking £100 as a unit—working expenses in 1913, £75; and, inasmuch as all the companies were overdrawn in those days on capital account, let us assume interest on overdraft £5. There would then be a total of £80, which the railways would have to provide before there was any profit at all. Let us assume then that the capital invested receives a remuneration of £20. Then you would have a total amount of £100 which the traffic would have to pay in order first of all to meet the £75 working expense, the £5 interest, and the £20 remuneration of capital. Let us now assume that we come to the post-war year, 1923 or 1924, and that the working expenses have doubled, other things being left unchanged. They would then have to pay £150 for working expenses instead of £75; there would still be £5 interest on overdraft, making £155; still £20 remuneration of capital; and the total that the traffic would have to find, therefore, would be £175. Now let us assume that the company has obtained from the Government, or some other source, some free reserves; and he proceeds to use the free reserves. He has put it in two columns, but I think I can do it in one, for shortness. Let us assume the company gets £200 free reserves. It uses £100 of it to pay off its overdraft, so that it wipes off the interest. The other it invests so that it earns 5 per cent. The figures would come out in this way: £150 working expenses; then you have the credit of £5 interest on the £100 free reserves invested; therefore you have got only £145 to find. Then the dividend, as before, has to be £20; and the traffic will therefore have to pay £165. That is the position when the railway company has got these free reserves and has

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used them in paying off its bank loan or investments. Now let us assume that the railway company uses the £200 reserves to meet some capital expenditure. Let us now see what the position is. Working expenses £150, still; the overdraft is recreated, because the £200 capital means that you are again borrowing from the bank £100; so that you have got 25 interest on overdraft again; and that is £155. The dividend, as before, is £20. But now, say the company, we claim 5 per cent.—I am taking 5 per cent. instead of 6 per cent. for simplicity—on the £200 capital which we have expended on capital account, therefore we want another £10 for that; consequently we want £30 remuneration. And if you add that £30 to the £155 you find that the traffic has to pay £185. So that whereas in regard to one company which uses its free reserves for capital expenditure—if this conclusion is right—the traffic would have to find £185, as against £100 pre-war; but if another company did not use the money for capital expenditure, and only left it invested, the same traffic would have to pay not £185, but £165; showing obviously that there must be something wrong somewhere in the suggestion that the railway companies are entitled to claim this 5 per cent., or 6 per cent., whatever it is.

President: Could the Lord Advocate have that document?

Sir Douglas Hogg: Yes, Sir, I should be glad if he would. (Document handed to the Lord Advocate.) In my submission that must be wrong, and it means that there is this distinction. You see that there being, on my hypothetical figures, £200, on which £10 a year would be a fair remuneration, at 5 per cent., the difference between the two positions, the difference in the charge made to the traffic by reason of what the Lord Advocate seeks to do, is not £10, but £20, the difference between the £165 and the £185. So that they get it twice over. The trader first of all loses the interest on the free reserves which otherwise would be bringing in the £10 a year, and then he is charged an extra £10 a year because the money has been spent on some capital expenditure; therefore he has to find an extra £10, so that he is £20 worse off and not £10. I venture to hand that to my learned friend. I have had it tabulated because I thought it was useful as an illustration of the sort of difficulties which the Lord Advocate's view really entails.

Then there is another difficulty which his view entails. As I understand his argument, he concedes he cannot claim any pre-1913 reserves for this purpose, because he says those already were—

President: Remunerated in the revenue.

Sir Douglas Hogg: Yes. Most of these free reserves were created after 1921, because they come largely from Government money; therefore they were not there when he says this was provided to meet that capital. In other words, you cannot provide for this expenditure out of free reserves which did not exist when it was spent. You do not provide those free reserves in respect of that capital expenditure; it was not there. All you have really done, when you get the free reserves afterwards, is that the result of getting the free reserves enables you to show that your bank balance was in credit and not in debit. It does not mean that these free reserves were provided in respect of that expenditure on capital account, and that is what you have to prove. It does not mean that there happens to be as much money as there was capital overspent.

Then, still dealing with this capital raised or provided point, we come to the question of the £60,000,000 Government money. It is interesting to notice—one does not like to probe too deeply into these mysteries—that the North Eastern Railway were specifically advised because their Chairman stated so that they could not use this Government money on capital expenditure, as it was not provided for that purpose at all, because it was not a free reserve available for dividends or maintenance, and

things of that kind; it was given for a series of items, the details of which Sir William Plender gave us, none of which were new capital expenditure, all of which were either making good work which was in arrears by reason of the Government control, or claims which the companies thought they had against the Government for moneys they ought to have under the taking possession of the railways under the Act. The Chairman said, and no doubt correctly, that he had been advised you could not use this, which was not capital money at all, for capital purposes, and treat it as capital; it was money which was provided for quite different purposes and could be utilised only for different purposes. In my submission you cannot take, as the companies have sought to take, this £60,000,000, which was provided for something quite different, and treat it as if it were provided in respect of expenditure on capital account. The Government provided the £60,000,000 under Statute. They did not provide it in respect of expenditure on capital account. Sir William Plender himself tells us they provided it for various items, none of which were expenditure on capital account incurred since the 1st of January, 1913; and therefore this money was not provided in respect of expenditure on capital account since that date, but provided in respect of something quite different. Exactly how the £60,000,000 was arrived at still seems to be wrapped in a certain amount of obscurity which my friend the Solicitor-General did nothing to dispel, if I may be allowed to say so; but the one thing which is clear is that it was not provided in respect of expenditure on capital account. Therefore, in my submission, "capital raised or provided" means the total of the capital receipts, and does not mean nothing at all—as my learned friend said—but merely capital expenditure.

President: Would you mind dealing with what I think was a portion of the Lord Advocate's argument, that if nothing were given in the rates as remuneration for this money—I am not calling it capital—that had been put into the undertaking, it must remain to the end of time unremunerated, and even if it were converted into capital later it would be still impossible to remunerate it? I think that was a portion of his argument.

Sir Douglas Hogg: Yes, it was one point that he stressed. It may be that Parliament had not fully seen that consequence; but it is not quite accurate to say it remains unremunerated, for this reason: presumably the capital is expended in order to induce traffic, and unless it increases the traffic of the undertaking it is not entitled to remuneration. Now, when the periodical reviews come up, the railway companies are entitled to keep a percentage of 20 per cent. of that increase beyond the Standard Revenue, and that is stereotyped as the Standard Revenue for the company. They add to the Standard Revenue anything which they have been able to make in excess of the Standard Revenue under the Act, and, therefore, they do get some remuneration in that way. Of course, the expenditure is a mere bagatelle, compared with the total expenditure on the line as a whole. If the line as a whole is benefited and the receipts have gone up, as we may assume they will, a portion of that remains for ever added to their Standard Revenue, and indirectly, therefore, they do get remuneration. I agree that Parliament does not seem expressly to have foreseen that very event and has not made specific provision for it; therefore, they will probably get less remuneration by that means than they will by the means which they suggest, of bringing in 58 (1) (b). But may I point out that, inasmuch as 58 (1) (b) expenditure is expenditure since 1913, and, therefore, according to their own view—some of it until 1922, 1923 or 1924—none of it has fully fructified, yet they are apparently to get, according to this, full allowance for the capital provided in respect of it, although in the ordinary course of things that capital would never bring in its full return until some much later period. There is no

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provision for revising the 58 (1) (b) allowance—there is provision as to 58 (1) (c)—therefore, if Parliament has excluded from additional remuneration some of the capital which they have spent by reason of the fact that they have only given remuneration to such capital as has been actually raised or provided, it is equally true in respect of such capital as has been raised or provided if you are to give it an additional allowance such as the allowance which ordinary railway capital may expect to receive. You are giving it a good deal more than the capital itself would bring into the users of the railway with that additional liability. Consequently it is as broad as it is long, and on balance the railway companies rather gain than lose upon that view of the effect of the section. I think I have made my point clear, Sir.

President: Yes. I thought I would remind you of the point.

Sir Douglas Hogg: I certainly ought to have dealt with it specifically. I think that is the answer. The fact is that Parliament has no doubt realised that these large sums of money were provided to a very large extent by the Government—to the extent of 250,000,000—and has thought it fair enough that the trader who, after all, is a taxpayer and the person who has to find the money, should gain some benefit in respect of such part of it as happens to be used on expenditure on capital account.

The next question which I want to ask the Tribunal to consider is a comparatively minor one again, and that is—What is the position with regard to expenditure on capital account, not on the amalgamated railway or any of its constituent or subsidiary companies, but on some other railway? I am taking two illustrations, the J. Joint Lines. The Tribunal will remember that the J. Joint Lines only come indirectly into Section 58 to the extent to which they pay dividends or make payments to the railways which jointly own them. The rates for the J. Joint Lines are fixed on what my learned friend the Lord Advocate described as some sort of *cy pris* doctrine on the analogy of the most appropriate railway whose rates had been fixed. It would therefore seem, in my submission, to follow that expenditure on capital account incurred on the J. Joint Lines ought not to be treated as expenditure by the amalgamated company, since the rate which we are fixing is not the rate for the J. Joint Line traffic, but it ought to be excluded and treated, as indeed it is, as merely an investment by the railway company. Then in that connection there are cases where the amalgamated company, or one of its constituents, has lent money to some other undertaking. For instance, there was one company which lent something like £1,000,000, I think, to the London Electric Railways at 4 per cent. Are you to treat moneys so lent as expenditure on capital account?

President: You have passed from J. Joint Lines now, and have gone on to loans to independent companies?

Sir Douglas Hogg: I was deliberately taking the two together. It really comes on the same question—What is the meaning of expenditure on capital account? Incurred by whom? Is money which is not spent by the amalgamated company itself, but is lent by it either to one of its Joint Lines or to some other company, to be taken as expenditure on capital account incurred since January, 1913? Is it not the right way to regard it merely as a loan, which of course brings in revenue—4 per cent., or whatever it is that is allowed—but which is not an expenditure on the railway undertaking? That is the next question which the Tribunal will have to consider. I was going to give two or three illustrations, but I dare say they are in the minds of the Court. There is one at Question 791, on page 74 of the shorthand notes. The question is: "And you have included as capital expenditure"—this is the London Electric—£1,000,000—"incurred the amounts of loans you have made to other railway companies at 4 per cent. per annum?—Yes. We claim under 58 (1) (b) for the

capital raised and provided to make that loan." I can find another one if necessary, but perhaps the one illustration is sufficient. My submission is that that is not capital "raised or provided" in respect of expenditure on capital account at all; it is a mere loan which is in the same position as if it had been invested in buying War Loan, or something of that kind.

Then the next question I can formulate is—What is the undertaking—(you will remember)—the allowances to be made, unless it can be shown that the expenditure has not enhanced the value of the undertaking? The importance of that is this. Does that mean, first of all, the undertaking, as I submit it does, of the amalgamated company? Because there are cases—we have some referred to—in which the expenditure may have enhanced the value of the particular railway which spent it if it is spent in order to enable it the more successfully to compete with some other railway with which it has since become amalgamated. If, for instance, the Great Northern Railway spent £100,000,000, and by doing so got to itself traffic which would otherwise have gone to the Great Central, obviously the value of the Great Northern is enhanced and the value of the Great Central correspondingly diminished. But when the two companies are amalgamated, the combined undertaking is surely in the same position as before. What is the ordinary meaning of the words so as exclude where the effect of the expenditure has been merely to transfer it from one constituent company to another and the value of the two undertakings together is not increased?

Then, again—what is the undertaking? This is all under the same heading. Is it merely the railway regarded as a means of communication between various places, or is it the railway *plus* what are called ancillary of subsidiary business under 58 (4), or is it the whole undertaking, regarded from the shareholders' point of view as a thing out of which they are to receive their revenue? My submission is that it ought to mean the last. Because, after all, what we are here concerned with is the return to the railway shareholders in respect of their investments; and the undertaking whose value has to be enhanced, in my submission, is the whole property which they own, regarded not merely as the metals or the railway business, not merely as a railway and subsidiary business, but the whole business from which profit is derived. The importance of it arises from this: Supposing money to be invested in, say, War Loan—free reserves. Supposing, contrary to my submission, you were to say free reserves were to be used as capital provided, has the value of the undertaking been enhanced if you have not increased its revenue-earning capacity but merely changed the way it earns its revenue? If, in other words, you take £1,000,000 out of War Loan and put it into a railway station or into docks, which directly or indirectly brings in £50,000 profit to the railway company, the railway company as a whole, regarded from the shareholders' point of view, is no better off. It is in exactly the same position as before. If, therefore, the undertaking means the whole thing, the value of the undertaking is not enhanced if you change the form in which it holds part of its assets and transform it from being merely an investment into something which is more closely allied to the original purpose of the railway—to some physical asset, a new piece of line, new docks, new signal-boxes, and so on—until the £1,000,000 has gone. Even if I am right there may be cases in which the result of the change of investment will be to increase the value. You might change from 5 per cent. War Loan into some extraordinarily profitable outlet which brings in 10 per cent., and obviously the value of the undertaking is enhanced. But what is the test for enhancement? Are you to take the undertaking as a whole, or are you to disregard the investments which are held and which form part of the revenue-earning property? It is obviously a matter of great importance.

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Then, what is meant by "enhancement of the value"; and, especially have you got to take into account the degree to which the undertaking is enhanced in value. For instance, supposing £1,000,000 were spent which probably, borrowed on debenture, would cost £40,000 a year; and supposing the effect of that were unfortunately to prove a dead failure financially and the traffic earned was not nearly enough to pay the interest on debentures, so that you borrow your £1,000,000 at £40,000 a year and you get only, say, £4,000 a year from the line on which the money is spent, have you enhanced the value of the undertaking? Obviously you have increased the value of the gross assets which the undertaking owns; but, on the other hand, you have more than equally increased the liabilities, and the shareholder is worse off at the end than he was at the beginning. Has the value of the undertaking been enhanced? Are you going, in other words, to take into account whether or not the money which you spend brings into the railway company more than it cost to get it? If it has not, has the railway company's undertaking really been enhanced at all?

Following up on the same line of thought, supposing the investment I have taken—supposing I am wrong and you disregard the cost of getting the money—are you to have regard to the fact that the extent of the increase of the value of the undertaking is altogether disproportionate to the amount of capital which has been raised or provided? Are you in the case I have given, for instance, where *ex hypothesi* the gross amount of increase of revenue would be £4,000 a year—are you to allow the £40,000 a year which it cost to get the money, or are you only to take into account so much of the increase of value as is represented by the £4,000 a year? That, again, is a question which may have very material results when we come to deal with detailed figures. Perhaps I ought to say on this that my learned Friend the Lord Advocate propounded a definition which, in my submission, is certainly wrong. He said that enhancement of the value merely means—page 34—that the expenditure is one which goes to the maintainability of the company's revenue. That is to say, so long as the revenue did not go down you must treat the value of the undertaking as being enhanced. That cannot be right. The maintenance of the revenue and the enhancement of the value of two wholly different things. It may be that the Lord Advocate used the expression advisedly and not inadvertently; because one can think of some expenditure, for instance electrification of suburban lines, where the purpose of the expenditure was not to increase the value of the undertaking but to see that the value did not decrease. Take the case of trams and omnibuses which have been taking away the traffic. It may have been necessary to expend the money not to increase the value of the undertaking but to prevent it diminishing. I submit that you have not there enhanced your value; all you have done is to prevent it getting any smaller.

Again—I think this comes in the same group of questions—what about expenditure on something which has been abandoned? There was a case which was given of an extension from Victoria to Ludgate Hill on the Southern Railway, which was a valuable asset no doubt, once upon a time, of the South Eastern and Chatham Railway, but which extension, according to the evidence, has now been closed. In calculating the revenue of the 1924 or 1925 undertaking and comparing it with 1913, plus these percentages of capital, are you to make any allowance in respect of abandoned enterprises? My submission is that you ought to, because otherwise you are not comparing like with like. It is not fair, in other words, to make the revenue of a line which only runs from Victoria to Dover compare with the revenue of a line which ran from Ludgate Hill to Victoria and from Victoria to Dover. You have not the same line, and you ought to make an allowance and make, in calculating the standard revenue, an adjustment for abandoned enterprises. I only use

that as an illustration. How many there are, and what they are, we shall have to investigate.

The next question is—What is an adequate allowance? First of all, the railway companies say 6 per cent. I do not know if you noticed that when their first witness went into the box—Mr. Quirey—he said, "You will have to find out from Sir William Plender. I cannot tell you anything about it." When Sir William Plender came into the box he said, "I do not know what an adequate allowance ought to be. I think probably it ought to be something more than the rate of interest which the capital would earn, and I should think something between 5 per cent. or 5½ per cent., or 6 per cent. would probably be reasonable; but I really do not know what." So the 6 per cent. has not been really deposed to by anyone; and I respectfully submit that Sir William Plender is wrong—though I always hesitate to say he is wrong about anything because he is a great authority—and I submit that his contention that you are to give more than the rate of interest which would be required on the capital is unsound; that the most the railway can ask, assuming I am right in saying that "capital raised or provided" means capital they have had to get from somewhere, to spend on capital account is what it would cost them to get it. We know that the average rate railway capital earns is 4·4 per cent.; we know that the rate the Government allows is 5 per cent., and that is the 58 (1) (a) allowance we have to give, and I should submit that somewhere between those two figures would be probably what was an adequate allowance to remunerate the additional capital. Subject only to this—and this is a point I have touched upon already, but I would like to touch upon it specifically—are you to take account of the fact that the bulk of this capital will not have become remunerated during the period for which you have fixed the rate. Taking the formula, for instance, most if it will be earning only two or three per cent., and if there were no Rates Tribunal and the railway companies had to carry on on their merits, they would expect to get something very small, 1½ per cent. in the first year, and it would take them 15 years before they got up to 5 per cent.—is it not an adequate allowance to give them as much as they would expect to get, especially when you take into account the fact that the figure you give remains a permanent figure of standard revenue, although, of course, the expenditure in respect of which they incur this is constantly increasing in value. So that if you give them too much now they are, obviously, getting too much when the 15 years is up, when the expenditure has fructified—to take their own average. That is to say, if you give them such a figure as would give them 5 per cent. at once, then, since the undertaking, as a whole, has to produce enough to pay 5 per cent. on the money put into this particular capital expenditure, it follows that at the end of the 15 years, when this capital expenditure is bringing in its 5 per cent., the total revenue of the undertaking must be a good deal more than adequately remunerated.

President: Are not we supposed to be remunerating the capital raised, which may bring in 5 per cent., and when raised may be put into works which may bring in only 1½ per cent.?

Sir Douglas Hogg: That is the trouble. It may be that the reason the Legislature gave the railways this advantage was, as some compensation for the fact that there was a good deal of capital expenditure in respect of which they did not raise capital. That may be the balancing consideration, which answers the question you put to me earlier. But I want you to have in mind the fact, which may be important from one view, that the capital spent could not be expected, if there were no Tribunal, to bring in anything like the 5 per cent.—or whatever is the normal cost—for some years after it was raised.

I come now to the next serious question on 58 (1) (c). First of all, what is a work? My learned friend Mr. Cripps is a particular authority on that topic,

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and I venture to submit that his point is a good one when he says they have not a right to take land on which they have never done anything, and on which they never will do anything. There was the case of some dock at Middlesbrough, which was never done on with; and there was the possible extension of the Great Central to London, which never fructified. Are they entitled to say that that is a work at all? In my submission, it does not become a work until they do some work upon it. If you buy land as a speculation and hold it indefinitely, you are not entitled to say to the Tribunal: "Make the users of the railway pay a remuneration on that expenditure, which the company itself would never have brought in if there had been no Rates Tribunal here." You appreciate that, if you were not here fixing the rates, no one would say that the users of the railway should pay interest on money which lies dormant, and which may lie dormant indefinitely.

President: Would not they get by the use of the maximum charges possibly some remuneration for that land?

Sir Douglas Hogg: They ought not to get it for that land.

President: They may have been getting it.

Sir Douglas Hogg: Yes; but they ought not to get it for that land. My submission is, first of all, that the word "work" is expressly used so as to exclude something where nothing has been done; and, secondly, that of course a work which has not been done and never may be done does not enhance the value of the undertaking. That would probably be another way of arriving at the same result.

Then—By whom must the capital be expended? There it is capital expenditure on works which enhances the value of the undertaking. I think I can do this by an illustration. There was the Vale of Rhaidol Railway which cost £75,000. In about 1909 the Cambrian Railway bought it for £25,000. The Vale of Rhaidol Railway never became a constituent or subsidiary company, and ceased to exist long before 1913. The Cambrian Railway never spent more than £75,000 upon the railway because they bought it for that sum. What was the capital expended which should be remunerated—the amount the Cambrian paid for the thing, or the amount which the Vale of Rhaidol Railway originally cost to construct? I think that is an illustration of the point: by whom must the capital be expended? The point is material because the witness whom I asked about it said most railway expenditure had largely depreciated by 1913, therefore the amount put into the railway originally had largely been lost by the time 1913 came along.

Now the next point—When is work fully remunerative?—Clearly, in my submission, that cannot mean—as an answer one got seemed to indicate—fully working on its maximum capacity; because I suppose no railway enterprise has become fully remunerative yet. Fully remunerative must mean: Has reached such a stage of development that it may be treated as part of the ordinary system instead of treated on a special basis by its growing much faster than the enterprise as a whole.

When does a work become fully remunerative? In that regard, and under 58 (1) (c), can the railway companies claim to have the allowances on their formula basis? In my submission they clearly cannot. My submission is, and I think it is borne out if one does what one is not supposed to do—that is, look back on the reports which were presumably before Parliament, but my friend the Lord Advocate produced them in evidence so he cannot complain—when we look back at the Report of the Committee we see they said that a formula could not be devised, and anything else would mean injustice, and that when the railway companies had a claim for work not fully fructified they must prove it. The railway companies recognise it would be almost impossible to prove that the work enhanced the value of the undertaking and had not become fully remunerative. It would be a very difficult task, I agree. It was only in very exceptional cases Parliament meant them to do it. But there is no justification, in my

submission, for the railway companies to claim or for the Tribunal to award that, because it is difficult for the railway companies to prove any particular work has enhanced the value of the undertaking and has not become remunerative to any particular extent, therefore the railway companies shall cut the Gordian Knot and not attempt to prove anything of the kind, but to say we are to accept that anything the railway directors sanctioned as for the enhancement of the value of the undertaking, we are to assume 15 years is the period in which it becomes remunerative, and it is to be worked out on a purely arbitrary formula. It is admitted it is purely arbitrary. The instance given by one witness on Friday showed that in all the cases he chose there was only one in which it anything like accorded with the formula, and that was not on his own railway. It is admitted that if you tried to apply the formula in any given case you will arrive at an unjust result. There is no more warrant for taking 15 years than 10 years, or for taking one-eighth as the average rate of growth, and so on. All these different things have to be averages. In different cases they vary. Some of them have fully developed in a year or two; some take even more than 15 years. My submission is that Parliament has said here that if a railway company wants to get a special allowance in respect of a major work—because it deliberately excludes the minor ones—it must prove it to the satisfaction of the Tribunal; if it cannot prove it, then it cannot have it.

President: It would have to be a very long inquiry. Can you make any practical suggestion for dealing with it?

Sir Douglas Hogg: I think the most practicable is that, except in a few cases, the railway companies ought not to claim it. Even on their formula I think their total figure is a little over £1,000,000 for all the four railways put together; and the formula is obviously wrong. My learned friend the Solicitor-General suggested that if you have a formula you ought to have a formula for different classes of undertakings, widenings, new lines, docks, and so on. My submission is that you cannot get a formula; and if the railway companies want to ask it in any particular case, let them do it, but there would be few cases and they would not take the trouble. It was put in *ex abundanti cautela*; because if a railway company had spent a large sum of money which had not become fully fruitful, but would afterwards, they should have the right to prove that exceptional case to the Tribunal, the formula being, 58 (1) (a) and (b), actual revenue for 1913, 5 per cent. on Government expenditure since, adequate allowance on capital raised or provided for other expenditure outside 1 (a). Then they say there may be some cases where there was a big expenditure which had not come in; if there is such a case the railway should have a right to prove it. I venture to think that if that were the rule laid down, we should not take any time about it, and the railways would not think it worth their while to do it.

The only other observations I wanted to make were these. I think those are all the questions which arise at present. I have already entered a caveat with regard to the proposal to leave out the economy claim proviso. My learned friend the Lord Advocate says he thinks it will give rise to various very difficult and complicated questions. All I want to say here and now is what, I think, I indicated last week, that if he does keep them until later, and if they do then raise difficult and complicated questions, he cannot complain if it is a very long time before these rates become effective.

Then there will arise at some stage some questions under 58 (4), which is the provision that the Tribunal shall take into account charges for ancillary and subsidiary businesses, and, if they are not big enough to bring in as much as they might, then they are to make an allowance. I think it may be considered that if you are going, as I apprehend you probably will, to include under 58 (1) (b) expenditure not merely on the railway itself—if you are

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going to treat the undertaking as including the subsidiary businesses so that expenditure on those businesses is to rank for allowance under 58 (1) (b)—then one will have to consider whether, in fixing the rates, the Tribunal will not have to be satisfied that the expenditure which enhances the value of the undertaking in respect of those subsidiary businesses is an expenditure which at least brings in as much as the 58 (1) (b) allowance, whatever it may be. Otherwise it might be said, under 58 (4) they ought never to have embarked on those outside enterprises.

I think I have formulated all the questions which occur to me as arising out of this very complicated

section at this stage. There will be others later, no doubt. I have only ventured to put before you quite shortly—because I do not think it is a case which admits very long argument—the main considerations on which I base the views I put forward in contravention of those urged by the Lord Advocate in respect of these claims; and I would once more stress, if I might, the grave importance to the community at large of not getting such charges fixed, and such a Standard Revenue fixed, as will render it possible for the trade and industry of this country to be carried on with reasonable economy and in a reasonable hope of successful competition.

(After a short adjournment.)

Solicitor-General: I propose now, with your permission, Sir, to interpose Mr. Wood. I wish to emphasize again that, of course, the Ministry are completely neutral in this matter; but they, equally with both of the litigants, are very anxious indeed for these questions to be answered, or this type of question to be answered, before the detail is concerned. Sir Douglas Hogg has put before the Tribunal already certain questions, and my suggestion to the Tribunal would be that ultimately the questions which have been adumbrated by Sir Douglas Hogg, and the questions which the Lord Advocate may care to consider, and Mr. Thomas and the other legal gentlemen, should be, if possible, so formulated into one set of questions covering all the different points, and put in rather in the matter of questions to a jury, because in the course of the argument it is

a little difficult to know what is the real specific question, and what is comment on the question. We have prepared certain questions, and we should be very pleased to meet the parties on both sides to see if we could agree to one common form of question as to what the various disputed matters mean. I now propose to ask Mr. Wood to make a statement in the box. My own view would be, subject to what you think, Sir, that it would not be a question so much of cross-examination, but merely putting in and understanding certain documents.

President: I think in the first instance that would be so, but I should not like to prevent anyone from getting a little fuller explanation if he did not quite understand the matter.

Solicitor-General: Certainly, Sir.

MR. WILLIAM VALENTINE WOOD, SWOT.

Examined by SOLICITOR-GENERAL.

4788. You are the Accountant to the Ministry of Transport?—Yes.

4789. And I think you have advised the Ministry of Transport from time to time about the matters which have arisen in this Inquiry so far as they affect the Ministry?—That is so.

4790. Have you prepared certain detailed documents?—Yes.

4791. Then I think in conformity with the Act for the assistance of the Tribunal, you have already put in a Memorandum F.4885?—Yes.

4792. Which comments on certain difficulties which had arisen up to the time when that Memorandum was prepared?—That is so.

4793. And subsequently you put in Memorandum F.5210 of the 6th May, which reconciles the various aggregations of the companies' claims and raises some certain outstanding points of difficulty at that time?—Yes; but before that we had put in the aggregate statement, the statement aggregating the published accounts of 1913. That is the document which was referred to on Friday afternoon.

4794. Have you got before you, Sir, the document "Receipts and Expenditure on Capital Account in 1913," and other documents. It is marked "Document 2" in my copy.

President: Yes, I have. It is headed "Great Britain, year 1913."

Solicitor-General: Yes, and there is a covering note.

President: Yes, I have that.

4795. *Solicitor-General:* The covering note explains that it aggregates the published accounts for the year 1913 of the railway companies forming each of the Amalgamated Companies. "In addition to the Constituent and Subsidiary Companies enumerated in the First Schedule to the Railways Act, 1921, the figures for Amalgamated Companies include five companies which had a separate existence in 1913, but which had been absorbed by another company prior to the passing of the Act of 1921." Then you give aggregate figures for companies other than the Amalgamated Companies, the separate columns showing duplications. I think that is the basis on which the increases in costs which were spoken to by Sir William

Plender—the 1913 figures were taken as the basis?—That is so.

4796. I think the most convenient course will be that if any member of the Tribunal, or anyone else, wishes to ask a question on those figures I will leave it at that.

President: The difficulty would be perhaps with the Opponents that they have not got copies of the figures. I am fairly familiar with them. Would it facilitate the proceedings if I handed my copy down to the leading Counsel on the other side?

Solicitor-General: I think I have a copy for Mr. Thomas.

Witness: We have got some more copies. All the parties have had this document for about a year. There is nothing new about it.

4797. They are merely the statistics for 1913 which form the basis. To be quite clear I understand that what is new here—the statistics were available before this time, but you have done the aggregations?—Yes, a year ago.

4798. For the purpose of this section?—For the purposes of this Inquiry.

4799. The 1913 figures, of course, are obtainable from the returns, but what I understand you have done is to aggregate them; it is merely a question of mathematics?—Aggregating all the published accounts for 1913.

4800. Then you have the aggregation on the first page, No. 4, "Receipts and Expenditure on Capital Account as at 31st December, 1913," and then you will see they are aggregated according to the various Groups. Of course, when they were originally published in 1913 they were separate?—Yes.

4801. And then you get Group 1, and so forth, various groups aggregated for companies other than Amalgamated Companies and the adjustments and totals, and that is done both to the expenditure and the receipts, and then there follows, I think, an analysis of the aggregations. That is so, is it not?—Yes.

4802. That follows on the later pages?—From thereon the capital account was not a full aggregation. We did not deal with the Accounts 1, 2, 3 and 5; we did 4 only. Then we made a complete analysis

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of Accounts 8 to 17, and the balance sheet, and also certain statistical data which follows behind.

4803. So that document really is the aggregation of the figures which were already ascertainable under the separate heads of the different companies?—That is so.

4804. I am told they were distributed a year ago?—That is so.

4805. First of all, I understand now that it is not suggested that the 1913 published accounts are conclusive from the point of law?—I gather that.

4806. But, of course, the question still remains as to whether they represent substantially the results of that time. Are there any particular matters, such as maintenance and superannuation risk, compensation for damage, and fire insurance, you would like to say something about? Those are matters which prevent absolute accuracy; is not that so?—I think those are the principal items which cannot be accurately dealt with in any account.

4807. Will you just explain why those items, maintenance, superannuation risk, compensation for damage, and fire insurance, prevent a complete reliance being possible on the 1913 accounts?—Shortly, on maintenance no one knows—no one can know—the actual wastage of the property in a year. It is an unknown figure.

4808. You take maintenance to be the wastage during the year?—I take it that is a short definition of it; it is the amount necessary to make good the wastage in the year.

4809. It has been suggested, you know, that taking the figures £24,500,000—I think that is the figure for 1913?—Yes, roughly, for Abstracts A and B.

4810. And £51,600,000 for 1923?—Yes.

4811. That that represents an increase of 111 per cent.?—Yes; almost 111 per cent.

4812. In your view, would that necessarily denote a greater volume of maintenance work in the later period comparing it with the increase in costs?—No. Having regard to the increase in prices in the additional property which requires to be maintained I came to the opinion it did not denote a greater amount of maintenance spent and provided than in 1913.

4813. You mean the figure of 111 per cent. is covered by the increase in costs of various kinds. Is that so?—Yes, and additional units.

4814. Are you impressed with this method in any event of arriving at the result of the amount of work done by these figures? How far do you think these sort of figures can be relied on at all?—I think they can only be relied on as a very rough approximation. I think it is absolutely impossible to have a sort of artificial standard maintenance in every year in future and relate that to 1913 by some percentage deduction. I think it is quite impossible to test future maintenance in relation to the maintenance of 1913 by any series of arithmetical calculations.

4815. Can you give me some reasons for that view?—Yes, labour. Hours of labour is the first one.

4816. I think in 1913 you had a nine-hour day?—Yes, broadly.

4817. And to-day, I think, you have an eight-hour day?—Broadly, yes.

4818. And, of course, in 1930 an uncertain number of hours per day?—What it may be I do not know.

4819. I do not know anyone who does; no doubt it will depend on the political situation! Then, of course, there is the question of labour-saving devices which come into use, I suppose?—Yes.

4820. That is another thing, and various kinds of economies and discoveries?—Yes, suppose you bring in a labour-saving device such as an electric platform truck. By the use of that device you are going to reduce your expenditure, but you will increase your maintenance. How are you going to allow for that? I do not know.

4821. So that I understand what you are saying is that any strict arithmetical calculation based on comparing the increased amount spent with increased

cost, and so on, would be fallacious. You cannot test the thing in that way?—That has been my experience.

4822. So that ultimately you leave it to the Tribunal to find what is practicable. I am not saying which is right as to the 111 and 105; but your opinion is that these are, at best, illustrations. Is that right?—Yes. I would like to take another case. Supposing we make some slight alteration in the chemical composition of steel and it adds a number of years of life on to the rails, how are you going to reflect that in any percentage? I do not know, nor can I see how anyone can know.

4823. I do not know whether you have formed any conclusion, apart from figures, whether there has been more or less spent on maintenance, or whether you think substantially that the matter has been in much the same state as it was in in 1913?—Looking at it very very broadly, I came to the conclusion that there had not been a greater amount spent on maintenance in 1913 than in 1923 spent and charged. I should have said adding the two together. By "maintenance" I mean maintenance, depreciation and repairs.

4824. In the sense in which the word has been used?—In the broad sense.

4825. To repair the yearly wastage?—Yes.

4826. I do not know if you can help the Tribunal about the 4 per cent. increase in goods rates. That, I gather from what has been said, may now be taken into consideration, or may conceivably be taken into consideration, at any rate excluding the figures for 1913, which were not decisive in themselves. Can you help us on the question of the 4 per cent. in those goods rates?—I do not see that we can help them very much beyond what we have already stated in a memorandum we put it in which we say this: "For the purpose of ascertaining the compensation payable under the Railway Control Agreements," etc.—(reading down to the words) "of that Act." In each of those cases the company was entitled to deduct from revenue brought into the Government account in each year of control the amounts which we show in those three schedules. The effect to the companies is exactly the same as though it had been added to the net receipts, but it was not.

4827. The Tribunal will form their conclusion as to the legal effect of that. The other matter I want to ask you about is the increase in the Post Office mails contract. I think you deal with it there?—The position is roughly the same as regards the exclusion of this sum from the Government account for each year of control.

4828. They are both retrospective; is that right?—No; they were both provisions made, because a similar thing was done in 1913. Broadly, that is the position.

Solicitor-General: Are those two items quite clear to you, Sir.

President: Yes.

4829. *Solicitor-General:* Now, the next thing I should like to ask you about is this question of the definition of the standard of the net revenue. I think in your memorandum you have given four different alternative methods of defining this?—Yes.

4830. I think the railway companies have adopted Method 4?—Yes.

4831. That is, they have deducted; take Table 8 in the Act and deduct the items on Table 9?—Yes, other than remuneration on capital and allocation of profits.

4832. Other than those two. I think that is clear; that is the method employed. It is for the Tribunal to say whether that is the right method. I do not think I am taking the matter too far in asking you whether that particular method, in your view, is objectionable?—I would rather avoid the word "objectionable." What I would like to say is that it greatly simplifies the matter.

4833. To take that method?—Yes, for this reason, it is the widest possible definition. There was always a great deal of room for controversy if part of the

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[Continued.]

profit of a railway were to be ascertained and not the whole. It is a difficulty which we had acutely during the period of Railway Control.

4834. You think it simplifies the matter?—Yes, from a pure accountancy point of view. I would like to mention it is not the practice of railway companies in this country to make provision for depreciation and maintenance on a sinking fund basis, therefore the profits earned by way of interest on such provisions come in as interest in No. 8 Account or, in relief of interest paid, in Account No. 9. I would like to make that distinction; because Sir Douglas Hogg this morning did not appear to have that in his mind. If a company pays out on balance a sum for general interest that is in No. 9; if on balance by receipts that is No. 8. I gathered from Sir Douglas Hogg this morning he thought that general interest was always on No. 8 item whichever way it fell. I may have misunderstood his point.

4835. Will you repeat the last part of your answer; I did not quite catch it?—General interest if on balance, a credit, is in No. 8 Account; if on balance, a debit, it is in No. 9 Account; and therefore I do not think you can bring in the element of general interest in No. 8 Account unless you also bring in the possible element in No. 9 Account; therefore you cannot stop at No. 8 Account.

4836. There remains the question of redemption?—Yes, that is a point which has not been mentioned, I think.

4837. I think you have aggregated the capital receipts in respect of securities redeemable, have you not?—Yes, at 31st December last there were £6,085,400.

4838. That is, securities which appear to be redeemable?—Capital issued by the four groups which was redeemable at that date.

4839. Taking, for the moment, Standard 4, you first of all have appropriations of the interest and dividend on capital issues and undivided profits, and appropriations to general reserve and special purposes?—Yes.

4840. I think in your document 5210 you have raised the question there before the Tribunal as to whether certain matters should be charged to revenue or not. You have got that, Sir.

President: Yes.

4841. *Solicitor-General:* Have you any fresh comment to make on those goods with regard to whether the matters there mentioned should be charged to revenue, or is, in your opinion, the whole memorandum sufficient. You know the matter I am referring to. They are different ones and start with the Southern Railway. You see there a number of them?—Yes, I remember.

4842. You queried some?—We set out all the reserves made in No. 9 Account, grouping together reserves. I do not see that any question can arise on the general reserves or on contingency fund, but the remaining items, I think, require further consideration. I think it is necessary to decide as regards each of these items whether it in nature represents a charge to revenue or a disposal of net revenue.

4843. That is your first question?—Yes, and if the item is in the nature of a charge to revenue, does that fact govern its disposal in aggregating the 1913 accounts, whether the provision is for past, or present, or future liabilities. If the item is in the nature of a disposal of net revenue, or if it is one that it should be regarded in the 1913 accounts because it is not a liability of the year 1913, what steps are necessary to insure similar methods of compilation in ascertaining net revenue for the purpose of Section 69; for instance, if an expense of 1924 liquidated in 1929 should be treated as an appropriation to net revenue in the latter year. Those are my general impressions on that point.

4844. Those three tests will appear on the Note; I do not know whether they are very clear at the moment, but I think you have applied those tests to various specific items where you did not find yourself quite in agreement with different groups in the

way they treated the accounts. I do not think it is necessary at this stage to go into this in detail?—I am neither in agreement nor disagreement; I am merely setting out the items.

4845. Then we might pass, perhaps, to the question of Section 58 (1) (a); that is the one you will remember in which the Government are concerned. With regard to that, I believe the actual amount is not yet ascertained. Is that so?—That is so.

4846. I think there are certain questions which you would wish to put before the Tribunal. First of all, you have the words "a sum equal to 5 per cent. on capital expenditure forming the basis on which interest was allowed"?—Yes.

4847. I think you raise a question as to whether those words "forming the basis" in sub-section (a) mean all expenditure included in the claim is to be allowed as a 5 per cent. allowance?—Yes.

4848. Will you amplify that?—If you will refer to page 94 of the Agreement which governs this matter. It is in Appendix 1, paragraph (b). It states there: "Interest to be calculated during the control period, for such portions of that period as correspond with the period in 1913 prior to the date on which the work was brought into use." Shortly, that means that if, say, a work costing £100,000 came into use on 1st of July, 1913, it was allowed during each year of control 4 per cent. for six months on that sum. The point which emerges is this, Is that £100,000 the proper figure to include for this purpose, having regard to the fact that one-half of it, or, rather, for one-half of the year 1913 it presumably earned profits and reflected in the base year? That is, shortly, the point.

4849. That is the point as to what the basis would be. Then I think you go on to say, "The basis on which interest was allowed"?—Yes.

4850. Of course, that is in a sense a question of interpretation as to what the word "allowed" means, and I think Sir Douglas Hogg has touched on that, but again it is one of those questions which need to be determined before we know whether the settlement which is brought in by reference here for the purpose of ascertainment under (1) (a) is determined on the right principles?—Before we leave this document there is another point on page 93, definition of capital expenditure: "Capital expenditure means sums charged to Capital (including expenditure on Leased and Worked Lines)." The point has been raised that the Great Western Company's claim includes capital expenditure on the Fishguard and Rosslare Railway. That is why it is in here. The Great Western were a company which received the interest for the Fishguard and Rosslare line, but the question arises, to my mind, whether it is properly included in the claims under sub-section (a), having regard to the fact that the Fishguard Company is not one of the subsidiary companies in the schedule to the Act.

4851. Will you please repeat that?—It is not one of the subsidiary companies which forms part of the amalgamated company.

4852. But is?—It is an independent line still. It still has a separate existence. I know it is to all intents and purposes the Great Western Company so far as it is in Great Britain, but it is an independent railway at the moment.

4853. We were discussing the word "allowed." For instance, to give an example illustrative of the problem raised by Sir Douglas Hogg this morning, the case of Waterloo Station?—Yes.

4854. Which was not settled?—The unsettled claims at 15th August, 1921, included all the 1921 claims obviously, and, in fact, included claims right back to 1914. Waterloo Station is a good example of that. Waterloo Station was not settled at 15th August, 1921; it has since been settled.

Mr. Jepson: In that case, would the certificate given by the Minister of Transport include other than the amounts on which the Government were allowing interest on the 15th August, 1921. If they have since been settled, would the certificate of the

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Government include the things which had been settled first, just as though they had been; the basis on which interest was allowed on the 15th August, 1921?—I would like to point out the Act is not until 15th August. It is at the end of the period not out.

4855. *Solicitor-General*: That may be a question of interpretation. Can you answer the actual question put in regard to the certificate?—We do not know what the certificate will be until we know what is to be in it.

Solicitor-General: We are waiting to know what it means before we certify.

President: I thought you were going to help us.

4856. *Solicitor-General*: I think we can now pass to 58 (1) (b). With regard to 58 (1) (b), I think there is a problem arising generally, is not there, with regard to the fourth method of defining "net revenue"?—Yes.

4857. Perhaps you will explain that?—I would like to get back, first of all, to the figures we quoted a short time ago for the redeemable capital, if such securities, the securities are mentioned, are redeemed.

4858. That is the £6,000,000 you are speaking of?—Yes, out of monies which contribute to net revenue without issuing other securities the effect is to reduce the amount of net revenue by a figure not necessarily the same figure, the amount payable in interest on issued capital is also reduced.

4859. *President*: Were these redeemable out of revenue?—They are redeemable; that is all we know. In fact, last year £480,000 was redeemed of securities of this nature, redeemed out of the surplus funds of the company.

4860. *Mr. Jepson*: You mean, that raises a criticism on the point that was put before us this morning as to whether it then becomes provided capital, I suppose. I have got in my mind some capital that is redeemable by the London, Midland and Scottish next year, 3½ per cent. redeemable Preference—I forget what the total was—but that was as it stands to-day, capital raised?—Yes.

4861. If they next year redeem that out of any of these reserves without going to the market for fresh capital under one interpretation of this it would be capital provided?—Possibly.

4862. It might be capital provided?—Yes.

4863. If any of that money had been spent upon works, I suppose since the 1st of January, 1913, and would probably be coming into either the (a) (1) or (b) (1)?—Yes.

4864. If it happened to come into (b) (1) and it was found that this account was being considered after it had been redeemed next year it might be said it is no longer capital raised?—Yes, it might, but it is not, of course, possible to ear-mark any particular item of capital raised.

4865. As it stands to-day, and I dare say it is only illustrative or typical of other monies which have been raised by the companies and are redeemable, if they redeem them out of their free reserves it takes them out of the category, whatever it may be, of raised capital and provided capital?—That is so.

4866. *Solicitor-General*: With regard to 58 (1) (b) you have dealt with the case of the Fishguard and Rossclare Railway, and you were saying that the basis, as I understand—you are assuming for the moment the basis of No. 4 for ascertaining net revenue, the question has been raised with regard to the additional capital raised or provided, the meanings of the words "raised or provided." Do you wish to make any observations on that part of the case which was mentioned by Sir Douglas Hogg this morning?—I think it is generally agreed that where capital expenditure has not been met by capital raised the effect is to reduce below the line income; that must be the effect; but the railway companies argue that where such below the line income was provided by the use of free reserves the user of the railway does not suffer if he is called upon to pay interest on that capital. In effect they claim that the increase of below the line interest due to the growth of reserves is a windfall to the railway users,

and as the companies use such reserves either in the payment of dividend or in a temporary provision of capital the user is not aggrieved because he has not received his windfall. That is the companies' argument, shortly, I think. On that the only comment I have to make is this: In 1913 the net revenue as claimed includes the revenue earned by such free reserves as there were in that year and is the amount taken to be the free reserve correctly compiled. On the first point, what happened in 1913? The companies' contention involves the assumption that the returns from free reserves in 1913 is net revenue, and that in later years the increase in that return is not net revenue; in other words, that the amount, and not the nature of the income, determines its destiny. On the second point, as to what is meant by a free reserve, I think there must be a definite meaning attached to that word. If a company was allowed, in ascertaining its net revenue for the purpose of Section 59, to reserve for some particular purpose an amount which afterwards was found to be excessive, the surplus would be free, to my mind. That is a free reserve because it would be improper to use that for the purpose of claiming an allowance to remunerate additional capital; that surplus was provided by the users of the railway, and the use of that surplus should not call for remuneration to the railway company. I do not know what is in their free reserves. This point may be covered in their definition, but I think it needs to be provided for. One witness, in answer to a question, stated that a profit on the sale of stocks or shares was a free reserve. That was what made me think that some regulation is necessary that profit is undoubtedly free, but I think that the profit would be the property—not a property—that the sum would not be free; in a sense, it is capable of distribution to the shareholders.

4867. *Mr. Locket*: It would enure to the shareholders and not to the traders?—I think if it did enure to the shareholders and not to the traders it would be incorrect.

4868. *Solicitor-General*: Assuming that there was a difference of opinion as to whether capital expenditure out of the free reserves could properly be included in this part of the section, you were saying that some definition of "free reserves" might give some guidance. Whatever the effect of the use of the free reserves may be, you want to know what is meant by free reserves in the section?—I think it is essential for after comparison.

4869. Now the next thing is the "undertaking."—Before you leave that, would you mind if I made another point on that? If a free reserve were hypothecated to meet capital expenditure, I take it it would cease then to be free until such time as capital has been issued in substitution. If, therefore, hypothecated free reserves were used, say, for dividend purposes, the consequential reduction of the net revenue would prejudice the user unless steps were taken to obviate this, the reason being that this is a diminution of the income below the line.

4870. There are some gentlemen here who have difficulty in hearing you. Would you mind repeating that?—If a free reserve is hypothecated to meet capital expenditure it must cease to be free until such time as capital has been issued in substitution. It is then free again. If, therefore, a hypothecated free reserve is used for dividend purposes the reduction of net revenue will prejudice the user of the railways unless steps are taken to obviate this.

4871. There is just one other point before we pass to the question of enhancement. There is the question of the £60,000,000. Perhaps I am a little slow in mentioning that. It has been suggested that there is some limitation as to the user of that?—I do not know that that is suggested.

4872. I only want to know if you can tell us this: Is there any public document you have in your mind in which there is the condition under which it was given and for what purpose? I do not want to keep anything from the Tribunal which may be

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[Continued.]

of assistance if it is not confidential. It is the actual final form in which this money was given that I am thinking of?—That is set out in the Act itself.

President: Section 11 I think it is.

4873. *Solicitor-General:* It is in Section 11, if you have that before you. It states the amount but it does not say anything about the applicability of it?—No. Section 11 (4) gives the application.

4874. The purposes for which it may be used are set out in subsections (1) and (2). Perhaps that is rather a question of law with which I need not worry you?—I would refer you to one other document which indicates the purpose slightly. It is Appendix 13 to the Colwyn Report. Appendix 13 to the Colwyn Report shows roughly the type of claims which the railway companies had against the Crown before the £20,000,000 was provided. I think it was roughly what Sir William Plender told the Tribunal earlier, but it gives it in the form of a letter from the Railway Companies' Association to the Minister.

4875. Is that page 31 of the Report?—No. It is Appendix 13. It is not paged.

President: It is the 25th November, 1920.

4876. *Solicitor-General:* Yes, that is right. It is in the form of a letter. (To the Witness): Then you refer to that document too as an indication of the purpose for which this money might be used?—Yes. I am sorry; I did not quite get your question. It is not for the purpose for which it might be used. The £20,000,000 was in discharge of any claim which might arise. This indicates the nature of the claims which might arise. I do not want you to take me as agreeing as to the purposes for which it might be used.

4877. It is a question of law?—That is a question of the interpretation of the section.

4878. I will take you now on the question of the enhancement of the value of the undertaking. Have you any observation to make on the question of the meaning of the word "undertaking" in Section 58 (1) (b)?—As an accountant I would say the wording of the Account No. 8 has a bearing on that. It refers to the net revenue of the undertaking.

4879. When you come to the question of enhancement of the value of the undertaking, what is your view about the use of the reserves for capital expenditure? Have you any particular opinion with regard to that? The question has been raised in the course of the proceedings whether the use of these reserves for capital expenditure is or is not an enhancement of the value of the undertaking. Have you formed any opinion on that?—The Act refers to the value of the undertaking. If "the undertaking" is to be read in a physical sense, regardless of reserves which have been made for depreciation, then I think the value of the undertaking would mean the capital expenditure minus the accrued depreciation.

4880. If the word "undertaking" were to be taken as including the whole of the value of the company regardless of whether it were physical, or shares, or whatever it might be, then I suppose you would say there would not then be an enhancement; is that it? It depends on the meaning of the word "undertaking"; is that what you are saying?—No. I would like to illustrate my point further, if you would not mind. If in 1923 the amount which accrued for depreciation on one railway was £1,000,000, and they provided that out of the working expenses to meet the cost of restoration, and a sum was used to finance temporarily the cost of some additional capital work, I could not regard that as an enhancement of the undertaking regardless of the reduction in value from the other cause to the depreciation. In other words, I would take it that the enhancement was a net enhancement.

4881. As to "adequate remuneration," I think the sum in 58 (1) (a) is mentioned as 5 per cent., and in

58 (1) (b) it is such allowance as may be necessary to remunerate adequately any additional capital. Various figures have been suggested varying from 5 per cent. to 6 per cent., and criticism has been made on that. Can you assist the Tribunal on that matter in any way with regard to what may properly be considered the basis which one might consider necessary to remunerate adequately additional capital?—There have been several references to a figure of 4·4 per cent., which was brought out in the Ministry's Annual Return for 1923. That I should like to point out is not the cost of issuing capital in 1923; it is the cost of issuing capital in the past 100 years. Before the South African War you could issue preference stock to give a yield of between 2½ and 3 per cent. I do not say it is a proper test, but a better test would be the relation of the dividends paid in 1923 to the market value of stocks issued at the end of 1923, that is really 5·4 per cent. That is to say, the dividend paid in 1923—the per cent. of the market values—is 5·4 per cent.

Solicitor-General: You are concerned to point out that the 4·4 has not always been used quite accurately in the proceedings. I mean it is really an average over a long period, and not actually the period for the year of the return.

President: It is the earning of the capital.

Witness: It is the earning of the capital in 1923, which may have been issued many years before.

4882. *Solicitor-General:* Now I propose to pass to 58 (1) (c), unless you want to mention any other matter on 58 (1) (b) that you think may be of assistance. If you will pass to 58 (1) (c) I have not very much to ask about that, but I do not know whether you could help at all about this formula for new work. You will remember that it is sometimes called a rule of thumb formula and sometimes it is said to be arbitrary. You no doubt know the formula to which I am referring. What do you say about that?—I do not think I have anything to say except that it is an arbitrary formula.

4883. Can you suggest to the Tribunal any other or better method for dealing with this matter under 58 (1) (c)?—No, I am afraid not. I have not thought of any other method. I have only thought of this one.

4884. You have thought of this one and come to the conclusion that it is an arbitrary one?—Yes; it is so explained.

4885. Yes, I agree. I thought perhaps you had something more scientific. Is there any other observation you would like to make on any matter?—There are a number of questions of detail.

4886. I have rather purposely avoided them; but is there any general matter of principle which you think would help in any way? Of course, you referred, in amplification of what you said this afternoon, to your various memoranda which are already before the Tribunal. You do not want to qualify them in any way by what you have said this afternoon? They seem to be regarded as part of the matter?—I do not think there is anything further I want to call attention to. There are minor points of detail which have been raised in most cases and can be raised later on.

4887. Yes, and you are always ready and willing to give any assistance on those minor points if you are asked to give evidence on them?—Yes.

Lord Advocate: You have not yet ruled, Sir, as to the extent to which we are to be allowed to ask questions.

President: I said that if anyone wanted any more explanation from the Witness on any statement that he had made, up to that point, at all events, the gentlemen here should be entitled to have that elucidation from the Witness.

Lord Advocate: I shall endeavour to keep within those confines. Perhaps you will be good enough to pull me up if I show any tendency to exceed them.

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[Continued.]

Cross-examined by the LORD ADVOCATE.

4888. You have made, I gather, a general survey of the maintenance provisions in 1913 as contrasted with the maintenance provisions in 1923?—Yes—a general survey.

4889. May I take it from you that you did not find any evidence to show that the provision in the later period was on a more lavish or more generous scale than the provision you had found had been made in 1913?—The provisions and expenditure added together, yes.

4890. Is that because of the increased cost of material and the increased charges for labour?—No, because I say you must take maintenance as a whole. I was assuming you were speaking of a provision as a reserve.

4891. What I really want to know is, is your considered view that, contrasting 1913 accounts with 1923 accounts, the method of compilation in 1923, as contrasted with the method of compilation in 1913, is adverse to the trader, favourable to the trader, or neutral?—I know nothing about the method of compilation in 1923. All I know is the amount charged under the heading "Maintenance" in 1923.

4892. Take it that way. The application of such methods as were applied in those two years has resulted in what, in your opinion?—It has not, in my opinion, resulted in charging a greater sum for maintenance than in 1913.

4893. That is really what I wanted to get at. And as regards the figure of 112½ per cent. which has been used for the purpose of equating 1913 cost figures to 1923 cost figures, do you again find yourself unable to apply any criticism on that?—Well, I have not seen the figures making it up. Broadly, it is the same figures as I got at from some other sources—

4894. That is splendid.—on very general data.

4895. If you proceeded independently and reached about the same figure, that is an interesting coincidence and rather a valuable one. Did you investigate it generally for yourself also?—Yes, I investigated it generally for myself. I came at the same figure in a different way, and I have allowed for something which the companies have not, I gather.

4896. For maintenance, what did you get?—For maintenance 106½ per cent., and for additional units 5½ per cent., making a total of 112.

4897. It is rather interesting that you should have arrived at that figure also?—I do not pretend it is a particularly valuable figure.

4898. That is your modesty.—It is merely a rough indication from general data of the rise in prices. I do not think any arithmetical formula will give you the precise result.

4899. I think, if I may respectfully say so, you are quite right upon that. Then you made one or two observations about the future. Is it your view that it would be impossible to stereotype the method of dealing with maintenance or depreciation for all time by the railway companies?—In my view it would be impossible to stereotype the method of comparison on an arithmetical basis.

4900. Would the system of allowance of provision for maintenance necessarily vary with what has to be maintained—say, an electrical system as against a steam system?—Yes.

4901. I suppose the life of rails, and the life of vehicles and so on will vary according to whether the rails are used for steam traction or electrical traction?—Yes, and other circumstances.

4902. All sorts of circumstances?—The volume of traffic will affect the life of a rail and the speed of the traffic will affect the life of a rail.

4903. Is the important thing to secure that each year shall carry its own proper burden of maintenance or depreciation according to the best estimates at the time in question?—That, I think, is the only possible test.

4904. And the precise test—that is to say, the test as to the method and so on—must necessarily vary at different periods. I think you will agree with that?—Yes.

4905. But the equitable consideration which we are all striving to get at in this is that each year shall have reflected in it a fair and proper apportionment for maintenance and depreciation?—Yes.

4906. According to the best canons of accountancy at the time?—Yes.

4907. And if that be secured, as far as you are concerned you would be content?—Yes.

4908. Very good; I am much obliged to you. Now a question with regard to Section 58 (1) (a), if you please. Do I understand that the difficulty present to your mind is the difficulty of what the minister has to certify? I am looking at the statute.—Yes, I know.

4909. It is a certain sum which we are to ascertain, which is, so to speak, to be handed to us. Are you still in uncertainty as to what it is you are to certify?—On the Fishguard and Rossare point I am.

4910. May I take it that that is the only one on which you wish to get the assistance of a decision?—I might qualify my answer. I am not in any uncertainty on that point. We would certify it, pointing out that it included so much for the Fishguard and Rossare Railway, and leave the Tribunal to decide it as it thought best.

4911. I follow. To what extent has the process of adjustment been completed? I mean what is left over? What ragged ends are still left over to be knitted up?—A substantial part of the year 1920-1921 is still to be examined, and there are one or two ragged ends going back to earlier years.

4912. What one wants to know is this: When will you be in a position to certify? I know there are two parties to the transaction, and therefore you cannot speak definitely, but are you near the end of this task?—I think so. I could not say when it is going to end. The railway companies have been busy on other matters.

4913. We have been rather occupied. I do not know whether you propose to round off the claim at the end, or whether each item is to be examined to a last decimal place?—There is not a great deal of labour in examining this. The labour is in the compilation more than in the examining.

Solicitor-General: Sir Douglas Hogg has raised certain points on the interpretation of this. Section 58 (1) (a) refers to another settlement, but that other settlement in its turn may be conditional finally on the interpretation of these words. That is really the difficulty—that a certain question has been raised as to what this means. It must mean the same thing here as it means there.

4914. *Lord Advocate:* I think we can practically get at it in this way. The witness can prepare a certificate containing what he conceives to be the proper contents, but he can add a note with regard to one or two of the items when those items fall either to be included or excluded according to a certain interpretation of Section 58 (1) (a). (*To the witness.*) The compilation of the contents of this certificate can be proceeded with, cannot they, pending any such decision?—Yes.

4915. So that we would not be hung up. You can proceed with your task of adjustment and the completion of this certificate, but you will put in a *notandum* on your certificate as to one or two items, I understand?—Yes, and in so far as the claims are not finally adjusted we could estimate very closely indeed the proper figure.

Lord Advocate: If my learned friend on the other side would be sufficiently accommodating, instead of delaying the matter, we might run that off.

Mr. F. G. Thomas: I understood Mr. Wood to say that he desired the view of the Tribunal before he gave the certificate; because, for the reasons which he explained, what was in the certificate would on one interpretation be very materially different from what would be in the certificate on another interpretation. That was what I understood to be his view. If I am wrong, of course, he will correct me.

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Lord Advocate: I rather gathered that he could quite easily produce the certificate if he were allowed to take a round figure on your residuary item, but it might be a question whether all that was in his certificate could be reckoned for the purpose of 58 (1) (a).

Mr. F. G. Thomas: It is not quite that, Sir, because, in our view, what would be in the certificate, which, of course, binds the Tribunal with regard to the remuneration on that particular capital expenditure, should only be such expenditure as had been the subject of the agreement between the Ministry and the companies which had been concluded on the 15th August, 1921, and that, therefore, of course, the certificate which I think my learned friend is referring to would be a very much larger certificate and would include many items which would not be in the other certificate which we believe to be the correct one on the interpretation that was put upon the Section.

Witness: I am sorry if I did not give you a full enough answer. I was assuming that that question of law would be settled.

4916. Lord Advocate: The question of law would then seem to be this: Whether the amount that you are to certify is to be determined not by the question of the amount on which the Government is to allow interest but upon the extent to which you and the railway companies had, on the 15th August, 1921, agreed the sum on which interest was to be paid. Had you so conceived the point?—I gather that is the point.

Mr. Wrottesley: The certificate was to be in those words.

Solicitor-General: If there had been no question or dispute on this point, as I rather anticipated from an early stage of these proceedings, the matter would have been acted on merely as a matter of accountancy. It would be idle now for us to reach a settlement on this point and then be told afterwards that we had settled it on the wrong basis. We should be in a terrible position if we did that. We cannot make a final settlement until the Tribunal has told us what is to be done. Suppose we were to fix a certain sum, say, £250,000, and the Tribunal were to say, "You are to pay £75,000." There would be endless confusion. We must understand on what basis it is to be done.

4917. Lord Advocate: For the purpose of certifying, yes, but for the purpose of finally determining as between the railway companies and the Government the amount on which interest is to be paid, no. (*To the Witness.*) Is not that right? Whatever may be the interpretation of 58 (1) (a) in this context, that will not in the least affect the question of your liability towards the railway companies under the agreement?—Not the slightest.

Lord Advocate: Therefore, you may proceed to complete that task of adjusting with the railway companies quite independently of what the contents of the certificate may be.

Mr. F. G. Thomas: Quite so. I do not want to interrupt, but there are two other points of principle to which Mr. Wood also referred: The point as regards the Fishguard expenditure, and the other point as regards the expenditure in 1913, which to some extent would be reflected in the earnings of that year. There are those other two points.

4918. Lord Advocate: Yes. I should not try to argue those. But I will ask one question about that matter of the capital payments in respect of items which came into use in the year 1913. (*To the Witness.*) I understand that where work had come into use and had begun to yield revenue you did not always give full capital recognition to the item in interest, because it was being reflected to some extent in earnings; is that right?—Yes. The interest ran from the date the work was brought into use in 1913.

4919. Yes, I follow. It is a little complex to follow, but so far as you have hitherto been considering Section 58 (1) (a) I think you have con-

centrated your attention on the fact that it is the capital expenditure forming the basis which you are in search of?—Yes.

4920. It does not say anything about the basis upon which compensatory revenue was given to the railway companies; it simply says "final capital expenditure," does it not?—That is so.

4921. What I am after really is that there is no provision made for splitting up the capital expenditure in relation to the fact that the works upon which that capital expenditure was made were brought into use in part in 1913?—No.

4922. No such provision is made?—No.

4923. Then with regard to 58 (1) (b) I understood you to have some difficulty with regard to the question of free reserves and their employment?—Yes.

4924. Will you assent to this, that from the point of view of economical administration it is better not to go to the market frequently with small issues, but to await a favourable opportunity and then put on the market a larger issue?—Yes.

4925. Is that in the interests of all concerned?—Yes.

4926. What is the method pursued by railway companies, when they are incurring capital expenditure, before enough has accumulated, so to speak, to justify going to the public?—They use their surplus funds to finance their capital expenditure temporarily.

4927. Is that a method, do you think, which is advantageous to the undertaking at large?—I do.

4928. You would commend it?—I would say it is the proper method.

4929. And then when that capital expenditure had gone a certain length and the amount has reached a figure which would justify going to the public, if the market at that time is favourable, then I suppose a wise Board of Directors would seize the opportunity of restoring their money?—Yes.

4930. It becomes a matter of discretion, I suppose, as to at which point you would go to the public?—Yes.

4931. Do you find that throughout the period from 1913 the railway companies observed that policy of which you approved?—Yes.

4932. Was the average from 1913 down to date an auspicious period for going to the public for money?—No.

4933. Was it to the benefit of the undertaking that they should not go to the public for money during that expensive period, but rather, so far as possible, finance their capital expenditure from their reserves?—It was.

4934. If they had been purists in the matter and had gone to the public for every £ of capital which they needed, would the position from the financial point of view have been very much worse?—It might or might not.

4935. It would depend, I suppose at what figure they could have obtained their money from the public?—And at what figure they re-invested their surplus funds.

4936. Perfectly. If the policy of making capital expenditure which the companies have pursued is a sound one, it must necessarily involve, must it not, a more or less constant process of utilising reserves and replenishing reserves; is that it?—That has been the practice. I think it is a sound practice.

4937. Do you consider that a particular work is any the less properly described as a work of capital expenditure, because when the contractors' accounts come in they are paid in the one way, that is to say, with moneys from reserve rather than with moneys that came from the public?—They are paid in the company's cash, which is not capable of being earmarked in one way or another.

4938. But when you are considering as an accountant whether a particular item of expenditure is an item of capital expenditure, you do not consider at all, do you, the source from which the money is drawn; you consider the purpose for which the money is expended?—Yes.

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[Continued.]

4939. And if you find that money has been expended upon works of a permanent character, would you call that "capital expenditure"?—I would.

4940. And as to the source from which that capital expenditure should be financed you commend, I understand, the principle of financing it from the general funds of the railway company until such time as an issue to the public enables them to obtain the money by subscription?—Until such time as an issue to the public should be made.

4941. We are quite in agreement upon that; I am much obliged. One of the other points with regard to which I was much interested in in your evidence was the extent of the enhancement of the value of the undertaking. I think we are all agreed that it is rather a difficult expression to analyse; but suppose money is taken from a reserve where it is earning interest and is applied in financing the construction of a work, always on the hypothesis that after a time the money will be restored to reserve at the appropriate moment to go to the public, do you say that the undertaking as a whole is not enhanced by that transformation of the reserve money into a physical work?—No, I do not.

4942. I understand, of course, that the balance-sheet may remain the same, because it is merely a transformation of credit in one shape to a credit in another, is it not?—Yes.

4943. I mean if you have £100,000 in Consols and then that becomes £100,000 in the shape of a railway bridge, in the one case you have got your scrip certificate and in the other case you have got your bridge?—Yes.

4944. And they are supposed to be of equal value if the bridge costs £100,000. Is it in that sense that you say that the undertaking has not been enhanced?—I do not think I said the undertaking had not been enhanced. I think I said I do not agree there has been an increase. Is that your point?

4945. I can see perfectly well that what you mean in an accountancy sense is that you have got this £100,000 in Consols or a £100,000 bridge, and the values are the same, so to speak?—Might I put it my own way?

4946. Please, I wish you would.—This is a question Sir William Plender was asked two or three times, I think. It was shortly this. Whether a transfer from investments to physical assets enhanced the value of the undertaking. I am not talking about the legal meaning of "undertaking." I do not know anything about that. I think the answer was that it might fairly be assumed that there was a reasonable prospect of such conversion ultimately increasing the value of the undertaking. With that I agree.

4947. Of course it is difficult to take one's mind away from the idea of a physical entity when we are discussing an undertaking. A new annex is built to the house, or a new bridge is built to the railway, and it appears as if the physical undertaking had been enhanced by the expenditure?—Not to me, unless I knew that the value of the physical asset

was greater than the investment which had been displaced.

3948. Have you had this in view, that the business of a railway company is to run railways, and not to be an investment company? It is primarily a railway undertaking?—It is primarily a railway undertaking.

4949. And therefore *qua* railway undertaking the undertaking is enhanced although *qua* investment company it may not be so wealthy. What do you say to that view?—I would say that the expenditure of the railway company had been increased by the inclusion of sums set aside for depreciation. If that is a charge to the working expenses of the undertaking, the sums earned by those reserves are a credit to the revenue of the undertaking.

4950. No doubt; but then unless the sums earned by the work are in excess of what was the return on the investment there is no increase in the revenue, is there, to the railway company?—No; that is my point exactly.

4951. And yet the undertaking *qua* railway undertaking may be said to be a more valuable undertaking?—It may or may not; I do not know.

4952. Well, somebody will have to decide that some day.—Somebody.

4953. You dealt with the formula with becoming respect, and said you had thought over it but thought apparently nothing. Do you approve of this part of the claim being dealt with by a formula, if you can get a reasonable formula?—I do not think it is for me to approve or disapprove.

4954. That is taking a perfectly correct attitude. Let me change my form of words. What do you think of a formula as a means of dealing with this part of the case? It is evidently a solemn moment.

I am looking at the Act—"such allowance as appears to the Rates Tribunal to be reasonable in respect of capital expenditure . . . on works which enhanced the value of the undertaking, but which had not at the beginning of the year 1913 become fully remunerative."

4955. The words are painfully familiar and will be found inscribed on our hearts after our death! We have been asked to work it out in a practical sense and are exhorted not to be too meticulous about it?—Yes.

4956. Do you think it would be possible to devise a formula which would do reasonable justice under that head of claim?—I am afraid I should like to see the formula first before I could answer your question.

4957. I do not think it is much use trying again; I have dodged round you every way without getting inside your guard. Now, do you think that the result of the application of the formula—I am not asking you to approve of the formula at all—in this case is to produce a reasonable result, which is what we are in search of under the Statute?—I think that is for the Tribunal to settle—"such allowance as appears to the Tribunal to be reasonable."

Lord Advocate: It is a drawn battle. I do not think we shall get any further forward!

Farther cross-examined by Mr. F. G. THOMAS.

4958. I will confine myself to matters of elucidation; I will not try and induce you to express any opinion upon general matters. As regards this question of depreciation allowances and comparing 1913 with 1923 and subsequent years, with which we have to deal, I gather that in expressing the opinion that 1923 was not substantially in excess of the provision of 1913, that was a very general impression formed not by anything in the nature of a complete investigation but, I think you said, speaking very broadly?—Yes.

4959. I take it that you had not gone into the varying methods which were applied in 1913 by the various companies that eventually formed parts of the groups, but the opinion was based on the consideration of the total maintenance figures?—Yes.

46038

4960. Of course the difficulty of which you speak, of comparing like with like as between the two different periods, where you are dealing with a figure such as the life of a particular type of asset, that is a matter you could compare, subject, of course, to the qualification which you quite properly suggested, that where, for instance, some chemical change had made an alteration in the life, that is a matter which would have to be taken into consideration?—That amongst other matters.

4961. But, subject to any alteration of that type, as a matter of accountancy you can, of course, compare period with period?—Very roughly.

4962. Having regard to the fact that the Standard Revenue which is to be settled as a result of these proceedings is not to be, as the Act says, not equal

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[Continued.]

to but equivalent to, and therefore introduces the element of value of the net revenue, of course it is necessary, so far as is reasonably practicable, to see that you are comparing like with like?—I do not see how you are going to say that. I think your point is rather that you have to see that 1913 is a reasonable figure, not that 1923 has an arithmetical relation to 1913; that carries you nowhere.

4963. Perhaps not. But what you have to see surely is that, after all, these questions of depreciation are not actual figures, they are provision made to meet what may be regarded as the wastage of particular assets?—It is much more than depreciation. Depreciation is only part of it. Depreciation and repairs and renewals is one thing.

4964. I do not know that I need follow it with you in great detail; because it is a matter of common ground between us and the railway companies that these matters are to be looked into, and that we are to have every opportunity of seeing that we are comparing like with like. Now on the point that the method adopted by the railway companies, which was the fourth method which you suggested?—I did not suggest it; I indicated it.

4965. You set out—it was very helpful indeed to have them set out in that way—various ways in which you might construe the expression. "net revenue"?—That is so.

4966. The one which the railway companies have selected was the fourth of those methods. Now that, as you have pointed out, has the merit that it includes the whole of the items, both above the line and below the line, in Account No. 8. That was the difference between your method during the period of control and that which is suggested to-day?—Yes.

4967. I take it your term "adding to the simplicity" also applies, does it not, to the deductions which it is suggested should be made from the figures in Account No. 9?—Some figures in Account No. 8.

4968. No. The two variations, you see, between the method which was adopted during the period of control and what is suggested now are, first, that the below-the-line items in Account No. 8 now come in as part of the net revenue?—Yes.

4969. And the other is, that items which are not really remuneration of capital—either loan capital or stock capital—are deducted as shown upon Account No. 9?—That is so.

4970. And your expression of opinion, as to the simplicity of that course, would apply to both those changes?—That is so; and it has a reaction on this question of maintenance. If by any chance the Tribunal allow the companies to reserve too large sums for depreciation in a future year, the interest earned by those excessive provisions will come into net revenue as here defined.

4971. I follow. But in expressing that view you are not, of course, expressing any view as to what view the Tribunal might feel called upon to take, having regard to the wording of the Statute, and simply expressing a view of what, from the accountancy point of view, would be the more convenient course?—That is all.

4972. Now with regard to the question of what was allowed in the form of interest during the period when the railways were in the possession of the Government. That, of course, is a question of fact, and I do not think I need ask you any further questions upon that; because it is understood that that will stand over until we know what view the Tribunal take as to what fact really has to be certified. I just wanted to be clear that I followed what you said about this redemption of capital. Am I to understand that what you have in mind are items of capital which would appear in the Capital Account of the companies, but which are subject to provisions for redemption?—Yes.

4973. And that that provision for redemption would be made, or might be made, not out of capital moneys but out of revenue moneys?—Out of balance-sheet moneys, I would put it.

4974. But to the extent to which capital was redeemed in that way, the claims upon the total net earnings available for dividend would be reduced by the redemption of that capital?—Yes; if on balance there was a reduction of capital issued through this cause there would be a reduction of net revenue.

4975. It might therefore be that the railway companies might maintain the total net earnings, although the charges upon those earnings, in the shape of capital, would have been reduced?—It might be; yes.

4976. And that is a danger which would have to be looked into?—Yes, it is a small point which requires to be safeguarded against.

4977. You told us the point of view from which you approached the question of how to give a meaning to the expression "enhancement in value of the undertaking." Would you be in agreement with the view which I put to Sir Ralph Wedgwood when he was giving evidence for the railway companies—and I think he agreed with me—that, when you come to consider how you are to estimate enhancement in value, you would expect to find that enhancement reflected in the net earnings of the undertaking?—Yes, it would be, in due course.

4978. Where you are dealing with a statutory undertaking, the measure of enhancement of value must really be substantially regarded as the increase in net earnings of the undertaking?—The ultimate increase, yes.

4979. And I gather that when you come to regard the meaning to be attached to the word "undertaking," you accept the meaning, or you suggest that it is important to bear in mind the meaning, which the word "undertaking" has in Account No. 8?—As an accountant, that is the meaning it has to me. That is all I say.

4980. And there, when it speaks of the revenue receipts and expenditure of the whole undertaking, that brings in all these items of general interest on the investments which are set out below the line in that statement?—Provided they are credits, yes.

Mr. F. G. Thomas: The word "undertaking" is not in any sense confined to the actual physical undertaking, the products of which are set out very largely above the line.

President: He said it referred to all the items.

4981. *Mr. F. G. Thomas:* If you please, Sir. (*To the Witness:*) When you gave the figure of 4.4 as the return upon railway capital, that was in 1923, was it not?—I think so.

4982. Is that the capital taken at its nominal value, or is that on capital expenditure?—It is neither. It is the average rate of interest and dividend paid per cent. of receipts from capital issued. It is the amount realised by the sale of stocks and shares and loans.

4983. Is that of the constituent companies, or is that of the amalgamated companies?—It is the companies now forming the amalgamated company.

4984. It reflects the figure now shown by their Capital Account?—Yes.

4985. And the stock issued by the amalgamated company?—I think no amalgamated company except the Great Western has yet issued its own stock. If it has, it is a small amount. Really, the figures are the receipts of constituent and subsidiary companies now forming the amalgamated companies. That 4.4 is the whole of Great Britain.

4986. But it is the figure which is reflected by the capital obligations of the group companies?—Of the groups and the non-group companies.

4987. Would you draw a distinction between reserves and provident funds as regards their utilisation for capital purposes?—I would draw no distinction between a reserve provided for depreciation or other expenditure chargeable to revenue and the provident fund you speak of. There is no distinction in my mind for this purpose.

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[Continued.]

4988. You expressed the view—and there I think we are in entire agreement with you—that it is a very prudent and economical thing, both in the interests of the shareholder and of the trader, to employ these funds for purposes of capital expenditure in proper cases?—Yes.

4989. But you expressed the view that there must come a time when that expenditure will have to be translated into actual capital issues?—Yes.

(Adjourned till to-morrow, at 10.30 a.m.)

4990. Is not there rather a distinction between provident funds and general free reserves, for instance, which might be called upon should the money be required at any moment?—Yes.

Mr. F. G. Thomas: I thought you would take that view. Of course, you have it in mind that there has been, since 1913, an enormous increase in these provident funds, which have to be invested, and I should imagine no better investment could be found than the capital expenditure of the company.

APPENDIX.

R.L.W. 2

Handed in by Sir Ralph Lewis Wedgwood.

STANDARD REVENUE—RAILWAYS ACT, 1921—SECTION 58.

HULL AND BARNLEY RAILWAY.

Year.	Capital Expenditure at 31st December.		Gross Receipts.		Net Receipts.		Net Receipts per cent. of Capital Expenditure.
	£	°	£	°	£	°	
1886	5,878,747	100	158,998	100	33,677	100	Per cent.
1887	5,942,571	101	216,647	136	72,839	216	573
1888	6,005,672	102	236,723	149	85,322	253	1,226
1889	6,774,225	115	264,319	166	98,281	292	1,421
1890	6,787,781	115	275,107	173	104,717	311	1,451
1891	6,794,697	116	308,034	194	122,925	365	1,543
1892	6,848,933	117	305,144	192	110,537	328	1,809
1893	6,866,537	117	263,766	166	84,433	251	1,614
1894	6,863,608	117	301,833	190	114,940	341	1,231
1895	6,874,655	117	323,869	204	131,402	390	1,675
1896	6,888,770	117	365,041	230	158,473	471	1,911
1897	6,979,849	119	374,752	236	151,276	449	2,300
1898	7,105,342	121	428,787	270	186,490	554	2,167
1899	7,267,453	123	430,388	271	174,219	517	2,625
1900	7,420,549	126	495,799	312	193,885	576	2,401
1901	7,549,917	128	452,737	285	168,102	499	2,613
1902	7,694,254	131	451,259	284	168,973	502	2,227
1903	7,706,410	131	488,064	307	191,662	569	2,196
1904	7,747,503	132	496,341	312	202,216	600	2,487
1905	7,805,420	133	505,621	318	204,612	608	2,610
1906	7,837,959	133	567,603	357	230,226	684	2,621
1907	8,073,643	137	557,052	413	261,879	778	2,937
1908	8,249,028	140	612,540	385	227,747	676	3,244
1909	8,452,179	144	656,281	413	271,978	808	2,761
1910	8,687,122	148	715,206	450	300,501	892	3,214
1911	8,936,260	152	700,063	440	290,820	864	3,459
1912	9,210,678	157	717,361	451	289,224	850	3,254
1913	9,184,457	156	656,973	413	332,769	988	3,140
							3,623

* Standardised on Year 1886.

